

TOWN OF KENDALL ZONING ORDINANCE

INITIAL ADOPTION MAY 14, 1992

AMENDED JULY 16, 1996

AMENDED JULY 19, 2007

AMENDED AUGUST 28, 2008

AMENDED MAY 16, 2011

UPDATED ZONING ORDINANCE ADOPTED NOVEMBER 21, 2011



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Bart Joseph
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David Schuth
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TOWN OF KENDALL ASSESSOR

Gene Massey

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ARTICLE I **GENERAL PROVISIONS**

SECTION 101 TITLE

The title of this code is the ‘Town of Kendall Zoning Ordinance, Orleans County, New York’, and shall include this text and zoning map. All existing Zoning Ordinances of the Town of Kendall, Orleans County, New York, are hereby repealed upon the effective date of this Ordinance.

SECTION 102 PURPOSE

This Zoning Ordinance is adopted pursuant to the Town Law of the State of New York, to promote and protect the public health, safety and general welfare, and in furtherance of the following related and more specific purposes:

- 1.) To protect the open, rural and natural character of the land.
- 2.) To preserve the town’s natural resources and habitats.
- 3.) To guide and regulate the orderly growth, development and redevelopment of the Town of Kendall in accordance with a well-considered plan and with long-term objectives, principles and standards deemed beneficial to the interests and welfare of the people.
- 4.) To encourage the use of alternative energy systems and to protect solar and wind access.
- 5.) To encourage the use of the Lake Ontario Coastal Zone in Orleans County as a unique resource and to protect it from incompatible uses that may compromise the aesthetic quality of the area, increase the potential for flooding and erosion, or damage the natural environment in a way that restricts its use and enjoyment by the residents of the town.

SECTION 103 CONFLICT WITH OTHER LAWS

Whenever the requirements of this Ordinance are in conflict with the requirements of any other lawfully adopted rules, regulations, codes or ordinances, the most restrictive of such rules, regulations, codes, or ordinances, or those imposing the higher standards, shall govern.

SECTION 104 VALIDITY AND SEVERABILITY

Should any section of, or provision of, this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the ordinance as a whole or any part thereof, other than the part so decided to be unconstitutional or otherwise invalid.

SECTION 105 FEES

Permit fees shall be collected and paid according to the fee structure in effect at the time of application. A fee schedule is posted at the Town Clerk’s office.

SECTION 106 VIOLATIONS AND PENALTIES

- A.) Any person, firm or corporation, who violates, disobeys, neglects or refuses to comply with any provision of this ordinance, shall be guilty of an offense, and upon conviction thereof; shall be subject

to a fine of not more than \$250.00 or imprisonment for a period not more than six (6) months or both. Each week a violation is continued shall be deemed a separate offense.

- B.) Any person owning, controlling, or managing any building, structure, or land, who shall undertake a wind energy conversion facility in violation of this ordinance or in noncompliance with the terms and conditions of any Wind Energy Conversion System permit issued pursuant to this ordinance, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to penalties per Section 730 subsection B of this ordinance. (Amended 08.28.08)

SECTION 107 ACTIONS

The town may maintain an action for a temporary restraining order, temporary injunction, or injunction to restrain, correct, or abate any violation of this Ordinance or any failure to comply with any of the provisions of this Ordinance.

SECTION 108 ENFORCEMENT OF COMPREHENSIVE PLANS

The provisions and regulations of this zoning ordinance and interpretations thereof, shall be made in accordance with the objectives of the town's comprehensive land development plan, pursuant to Section 813 (A), Article VII, and shall be consistent with the adopted Local Waterfront Revitalization Program (LWRP), which, with its policies, maps and uses, is hereby adopted by reference and declared to be a part of this zoning ordinance. Any development that falls within the boundaries of the Local Waterfront Revitalization Program (LWRP), in any district classification, shall be coordinated with the policies and plans of the LWRP as are adopted by the Town Board, including any amendments thereto.

ARTICLE II DEFINITIONS

SECTION 200 WORD TERMS AND DEFINITIONS

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

- The word “person” includes a firm, association, partnership, trust, company or corporation as well as an individual.
- Words used in the present tense include the future tense. The singular includes the plural.
- The words “shall” and “must” are mandatory.
- The words “used” or “occupied” include the words intended, designed or arranged to be used or occupied.
- The word “lot” includes the words plot or parcel.

SECTION 210 DEFINITIONS

ACCESSORY BUILDING OR STRUCTURE: A detached building or structure which:

- 1.) Is located on the same parcel as the principal building.
- 2.) Is customarily incidental and subordinate to, and serves a principal building.
- 3.) May not provide living space nor shall be used as a dwelling.
- 4.) Contributes to the comfort, convenience or necessity of occupants of the principal building use.
- 5.) This definition shall include detached decks.
- 6.) This definition does not include devices previously used or intended for highway use.
(Amended 05.16.2011)

ADULT ARCADE: Any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically or mechanically controlled still or/motion-picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time and where the images so displayed are distinguished or characterized by the depicting or describing specified sexual activities or specified anatomical areas. (Amended 06.08.06)

ADULT ART FORM : That which stresses technical knowledge and proficiency, cunning, ingenuity and subtlety in devising, inventing or executing acts or displays, which the depicting of specified sexual activities, states of nudity or exposure of anatomical areas characterizes. (Amended 06.08.06)

ADULT BOOKSTORE or ADULT VIDEO STORE: A commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental of any form of consideration any one (1) or more of the following:

- 1.) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, DVD's, video cassettes or video reproductions, slides or other visual representations, or any future technology, which depict or described specified sexual activities or specified anatomical areas.
- 2.) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as "adult bookstore" or "adult video store" so long as one (1) of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

- 3.) Adult Internet Usage - A commercial establishment which as one of its principal business purposes offers the usage of computer for personal use to access the internet either for free or rental, for a preset amount of time at a preset rate. (Amended 06.08.06)

ADULT CABARET: A nightclub, bar, restaurant or similar commercial establishment which regularly features:

- 1.) Persons who appear in a state of nudity; or seminude;
- 2.) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- 3.) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depicting or description of specified sexual activities or specified anatomical areas. (Amended 06.08.06)

ADULT MOTEL: A hotel, motel or similar commercial establishment which:

- 1.) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- 2.) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- 3.) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours. (Amended 06.08.06)

ADULT MOTION-PICTURE THEATER : A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. (Amended 06.08.06)

ADULT THEATER : A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities. (Amended 06.08.06)

AGRICULTURE/ (FARMING): The use of land for agricultural production purposes including, tilling of the soil, dairying, pasture, animal and poultry husbandry, apiculture, arboriculture, horticulture, floriculture, viticulture, and accessory uses for packing, storing, processing and retail sales of agricultural products, provided that the operation of any such accessory uses shall be secondary to that of the principal agricultural production activities. (Amended 05.16.2011)

AGRICULTURAL BUSINESS ESTABLISHMENTS (AGRI BUSINESS): A business engaged in performing agriculture, animal husbandry, or horticulture business on a fee or contract basis. (Amended 08.28.08)

AGRICULTURAL WIND ENERGY FACILITY: A system consisting of supporting tower(s) and wind turbine(s), with associated plant and equipment, used primarily to generate electrical power for agricultural purposes, to include all farm uses and residence of farm owner or tenant of property; regulated and taxable as farm asset. The farm operation shall be seven (7) acres or larger and generate annually a minimum of ten thousand (\$10,000) dollars of farm income.

AIRPORT: Any facility for the purpose of engaging aircraft to flight.

ALTERATIONS: As applied to a building or structure, a change or rearrangement in the structural parts, or an enlargement, whether by extending on a side or by increasing in height, or the moving from one location to another.

ALTERNATIVE ENERGY SYSTEMS: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, or electricity or other forms of energy on-site, and may be attached to or separate from the principal structure. Current examples include windmills, solar collectors and solar green houses, heat pumps or other related devices. (Amended 08.28.08)

AMUSEMENT CENTER: Any indoor place or enclosure which is maintained or operated for the amusement, patronage, or recreation of the public, with three (3) or more coin-controlled amusement devices, including the types commonly known as bagatelle, baseball, football, pinball, and video games.

ANEMOMETER is an instrument used for the measuring of wind force, direction and velocity.

ANIMAL HOSPITAL: A business that treats animals and regularly houses them on the premises overnight and for extended periods for treatment.

AS BUILT: When construction conditions require changes to contract drawings, they are so noted and described on final drawings of record. (Amended 08.28.08)

BAIT AND TACKLE SHOP: Store for retail sales of live bait, fishing equipment and small fishing accessories.

BASEMENT: That space of a building that is partly below grade, which has more than half of its height, measured from floor to ceiling, below the average established curb level or finished grade of grounds adjoining the building.

BED AND BREAKFAST: A single-family, owner-occupied dwelling where overnight lodging, with or without the service of meals, is offered to a maximum of eight (8) transient guests for compensation. Such use shall be clearly incidental and secondary to the principal use of the dwelling. This term includes hostels and Tourist Home establishments, but does not include motels, hotels, tourist courts, motor lodge, tourist cabins or similar terms.

BUILDING: Any structure that is permanently affixed to the land, has one or more floors and a roof, and is intended for the shelter, housing or enclosure of persons, animals, property or the operation of a business. (Amended 05.16.2011)

BUILDING, FARM: Any building used for the housing of agricultural equipment, produce, livestock or poultry, or for the incidental or customary processing of farm products, and provided that such building is located on, operated in conjunction with, and necessary to the operating of the farm as defined herein. (Amended 05.16.2011)

BUILDING, PRINCIPAL: A building in which is conducted the main or principal use of the lot on which said building is situated. In any residential district any dwelling shall be deemed to be a principal building on the lot on which it is located. (Amended 05.16.2011)

BUILDING HEIGHT: The vertical distance measured, in the case of a building with a flat roof, from the curb

level to the level of the highest point of the roof beams, and, in the case of a building with a pitched roof, from the curb level halfway between the top of the plate and the ridge, but not including chimneys, spires, mechanical penthouses, towers, tanks, and similar projections.

BUSINESS: Includes the purchase, sale or any other transaction involving the handling, servicing or disposition of any article, substance, commodity, or service, tangible or intangible, and includes offices and commercial buildings, recreational and amusement enterprises, and any operation where the above-described activities are conducted in return for remuneration or consideration of any type. For the purpose of this ordinance, "business" shall have the same meaning as "commercial," and reference to commercial districts or zones shall be interpreted as referring to business districts. (Amended 05.16.2011)

BUSINESS, CONVENIENCE: Small commercial establishments catering primarily to nearby residential areas providing convenience goods and services including but not limited to grocery stores (of less than 6,000 square feet in gross floor area), drug stores, beauty salons, barber shops, carryout dry cleaning and laundry pickup stations.

BUSINESS, GENERAL: Any establishment engaged in sale of goods or services not otherwise identified in this section.

BUSINESS, DRIVE-IN: A traffic-generating facility where a product is sold or a service is performed for customers who enter the premises or while they are in or near their motor vehicles in off-street parking or service areas. This term shall include drive-in outdoor theaters, drive-in banking, drive-in photo processing, fast food establishments, auto washing facilities, restaurants, taverns, refreshment stands, and similar uses. This term shall not include retail fuel outlets.

BUSINESS, SERVICE: A commercial establishment primarily providing services rather than selling products.

CAMPING UNITS: Any vehicles used or arranged for temporary living or sleeping purposes, mounted on wheels and drawn by a power-driven vehicle, or such a vehicle having its own wheels removed, or self-propelled unit.

CAMPGROUND: A parcel of land used or intended to be used, let, or rented for occupancy by campers or for occupancy by or of trailers, tents or movable or temporary dwellings, rooms or sleeping quarters of any kind.

CARPORT: A roofed structure without enclosing walls, used for the storage of one or more motor vehicles.

CHARTER BOAT SERVICE: A waterfront facility having docks and moorings for small boats, where engagement of services include a boat, crew, and captain for a fee, or other remuneration.

CHURCH: Any structure used for worship or religious instruction including social and administrative rooms accessory thereto.

CLUB: Any organization catering to members and their guests, or a building or premises used for recreational, general, social, or athletic purposes not open to the general public. Clubs shall not be conducted primarily for gain, and vending stands, merchandising, or commercial activities shall not be conducted except as required for membership and purposes of such club. For the purpose of this Ordinance, this term shall include religious organizations, lodges, fraternal organizations, mutual benefit societies, and other like organizations.

COMMERCIAL WIND ENERGY CONVERSION SYSTEM: (also CWECS) A wind energy conversion system (WECS) consisting of one wind turbine, one tower, and associated control or conversion electronics and delivery system, which has a rated capacity greater than 250 kilowatts and a total height of no more than four hundred fifty (450) feet. (Amended 08.28.08)

COMMUNICATION TOWER (CELL TOWER): A tower constructed for the purpose of initiating or improvement to cellular communications.

CONDOMINIUM: A Condominium shall be regulated as a Dwelling. It shall be regulated as a Dwelling, Two-Family, if it contains two dwelling units. It shall be regulated as a Dwelling, Multiple-Family, if it contains three or more dwelling units.

DAY CARE: Care provided for three (3) or more children away from their own home for more than 3 hours but less than 24 hours per day per child, which care is provided with or without compensation or payment.

DAY CARE HOME (FAMILY): Day care of not more than six (6) children provided in a family home.

DAY CARE CENTER: A place other than an occupied residence which provides day care of children. An occupied residence which provides group care for seven (7) or more children away from their own homes.

DEVELOPMENT: Any change made to improved or unimproved real estate including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, excluding normal maintenance to farm roads.

DRY DOCKING of BOATS: The process of moving a ship or boat from the water to dry land or removing water around a ship to enable work to be performed on the exterior part of the ship below the waterline. Dry docks are used for the construction, maintenance, and repair of ships, boats, and other watercraft. (Amended 05.16.2011)

DWELLING: Any building or portion thereof designed or used exclusively as a residence or sleeping place for one (1) or more persons. Structures which do not have permanent or approved sanitation facilities shall not be considered a residential dwelling. In addition, no basement sited independently of a structure shall be used exclusively as a dwelling. The minimum gross habitable floor area of any dwelling shall not be less than seven-hundred-sixty-eight (768) square feet.

SINGLE FAMILY: A detached residential dwelling designed for and occupied by one family only.

TWO-FAMILY: A detached residential building containing two dwelling units, designed for occupancy by not more than two families. This term shall include Duplexes.

MULTIPLE-FAMILY: A residential building designed for or occupied by three or more families with the number of families in residence not exceeding the number of dwelling units provided.

SEASONAL HOME: A dwelling unit intended for occupancy only during certain seasons of the year, principally for recreational use by the owner, including beach cottages, hunting cabins, vacation cottages, summer cottages and vacation lodges.

DWELLING UNIT: One room or rooms connected together for owner occupancy or rental or lease on a weekly, monthly or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure and containing independent cooking and sleeping facilities, designed for occupancy by one family.

ELECTRONIC AND ELECTRONIC MAGNETIC INTERFERENCE: Interference to satellite towers, microwave transmissions, cell communication towers and “ghosting” of television reception caused by electronic reflections of electrical generating facilities. (Amended 08.28.08)

ESCORT: A person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person. (Amended 06.08.06)

ESCORT AGENCY: A person or business association, who furnishes, offers to furnish or advertises to furnish escorts as one (1) of its primary business purposes for a fee, tip or other consideration. (Amended 06.08.06)

ESSENTIAL SERVICES AND PUBLIC UTILITIES: Erection, construction, operation, or maintenance by municipal agencies or public utilities of telephone dial equipment centers, electrical or gas substations, water treatment or storage facilities, pumping stations and similar facilities, but shall not include telecommunication facilities as defined herein, and shall not include wind energy facilities (including infrastructure supporting wind energy facilities), landfills, waste transfer stations or other facilities with the primary purpose of handling or disposing of household or industrial waste. (Amended 08.28.08)

ESTABLISHMENT: Includes any of the following:

- 1.) The opening or commencement of any sexually oriented business as a new business;
- 2.) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- 3.) The addition of any sexually oriented business to any other existing sexually oriented business; or
- 4.) The relocation of any sexually oriented business (Amended 06.08.06)

EXCAVATION (Quarry, Sand Pit, Gravel Pit): A lot or land or part thereof used for the purpose of extracting stone, sand, or gravel for sale, as an industrial or commercial operation, but does not include the process of grading a lot preparatory to the construction of a building which has an approved zoning permit. The stripping and sale of topsoil shall not be allowed.

FAA: Means the Federal Aviation Administration.

FALL ZONE: Means an area designed to contain the accidental failure of a vertical structure should be it toppled by vandalism, structural or unknown reasons.

FALL ZONE (FOR WIND ENERGY SYSTEMS): A distance of one and a half times (150%) the Wind Energy System height as measured as a vertical distance from the preconstruction or post construction grade, whichever is lower, at the tower base to the highest point (apex) of the rotor blade. (Amended 08.28.08)

FAMILY:

- 1.) A householder plus one or more persons related by blood, marriage or adoption and limited to the spouse, parents, grandparents, children, grandchildren, brothers or sisters of, the householder, or of the

- householder's spouse, living together as a single, not-for-profit housekeeping unit sharing kitchen facilities; or
- 2.) A group of persons headed by a householder caring for a reasonable number of children in a family-like living arrangement which to all outward appearances is the functional equivalent of a family of related persons; or
 - 3.) A maximum of two persons not sharing a relationship as described above.

FARM: See AGRICULTURE (Amended 05.16.2011)

FARM LABOR CAMP: Any structure or combination of structures, building or buildings in which people are housed on a farmer's own land who are employed in the individual farmer's personal farming operation, on that farmer's land or land that he has under his control by a valid and existing lease.

FARM OPERATIONS: The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including commercial horse boarding operations, timber processing, compost, mulch or other biomass crops. A farm operation shall also include the production, management and harvesting of farm woodland. For purposes of this section a Farm Operation is defined in Article 25AA, Section 301 subdivision eleven and Section 301 subdivision two of the New York State Agricultural and Markets Law. Farm operations may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other. (Amended 05.16.2011)

FENCE: An enclosure or barrier, made of wooden or metal posts, boards, rails, plastic, chain link mesh or similar type materials, used as a boundary, decorative enclosure, means of protection, or confinement. (Amended 05.16.2011)

FISH CLEANING STATION: A structure designed for the sanitary wash down, gutting, and filleting of fish, as well as the storage and disposal of wastes associated with the fish cleaning process.

HOUSEHOLDER: An individual who resides in a dwelling unit and who owns rents or otherwise has legal possession of such unit.

FLOOD HAZARD DISTRICT: Refer to the Town of Kendall Local Law No. 1- A Local Law for Flood Damage Prevention, 1987 as authorized by the New York State Constitution, Article IX, Section 2, and Environmental Conservation Law, Article 36.

FLOOR AREA, GROSS: For the purpose of applying the requirements for off-street parking and loading, gross floor area in the case of offices, merchandising or service types of uses, shall mean the total floor area to be used or intended to be used by tenants, or for service to the public as customers, patrons, clients or patients, including areas occupied by fixtures and equipment used for display or sales or merchandise. It shall not include areas used principally for non-public purpose such as storage, incidental repair, restrooms, fitting or alteration rooms or general maintenance of enclosed pedestrian malls or corridors.

FLOOR AREA, HABITABLE: The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business.

FRONTAGE: All of the property abutting on one side of a road, street, or thoroughfare, measured along the

road, street or thoroughfare line.

GARAGES, PUBLIC: Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, recreational vehicles, boat and other tangible personal property. Private garages shall be regulated as accessory buildings.

GLOBAL POSITIONING SATELLITE (GPS): Satellite placed, monitored by governments, to accurately reference electronically, instrument locations on the earth's surface. (Amended 08.28.08)

GROUND CLEARANCE: The minimum distance between the lowest point of the rotor blade rotation and ground at the base of a tower. (Amended 08.28.08)

HOME BUSINESS: Except as stated in Section 709L, an accessory use conducted within a single family, occupied dwelling or an attached or detached accessory structure (including a barn) for gainful employment involving the manufacture, provision, or sale of goods and services principally on the premises.

HOME OCCUPATION: An accessory use conducted within a single-family, occupied home or attached accessory structure for gainful employment involving performance of services which are primarily provided away from the premises.

HUB HEIGHT: Center of rotational axis of rotor blades and gearbox (nacelle). (Amended 08.28.08)

INDUSTRIAL WIND ENERGY FACILITY: Shall be considered to be the same as CW ECS and regulated as such. (Amended 08.28.08)

INFRASOUND: Sounds produced by such devices as wind generating equipment below the sound level of the audible level of human hearing, about 20 hertz (Hz), which produces tactual sensation of pressure for some humans and travels farther than higher frequencies. (Amended 08.28.08)

JUNK YARD: A lot, land or structure or part thereof used for the collection, storage, disassembly, packing, sorting, salvaging, buying, selling or exchange of waste paper, rags, scrap, or discarded material or machinery, or parts of any sort. More than two (2) abandoned, unregistered, disabled, dismantled, or partly dismantled vehicles or pieces of equipment, allowed to remain unhoused on a premise for a period of more than thirty (30) days shall constitute a junkyard. Also, the unhoused storage, sale, abandonment of waste paper, rags, scrap metal, discarded materials, or the collecting, dismantling, storing, salvaging or abandonment of machinery, appliances or vehicles not in operating condition shall constitute a junkyard. Automobile junk yards as defined in General Municipal Law, Section 136 shall be included within this definition.

KENNEL: Any lot or premises on which four (4) or more domestic animals more than four (4) months of age are housed, groomed, bred, boarded, trained, or sold.

KILOWATT (KW): A unit of measurement of electrical power equal to one thousand (1,000) Watts. (Amended 08.28.08)

LAKE ONTARIO HIGH WATER MARK: The waterside boundary of the Town of Kendall that coincides with the mean high landward line along Lake Ontario as measured at 248.8 feet above sea level on the International Great Lakes Datum. (Amended 05.16.2011)

LAKE ONTARIO PROPERTY: Residential property located in the Waterfront Residential (WR) and Waterfront Development (WD) districts that have setbacks, conditions, or requirements unique to the Lakeshore, and shall have the following classifications:

1.) Lakeshore Property

Property that adjoins the Lake Ontario shoreline and is provided access by a Private or Town road that runs parallel to the shoreline.

2.) Lakeview Property

Property whose front adjoins the Private or Town road that is shared and common with Lakeshore property.

3.) Combined Lakeshore and Lakeview property

Lakeview property that is combined with Lakeshore property to increase the size of a Lakeshore lot. A Private or Town road generally goes through the middle of the combined lots and provides access to the property. (Amended 05.16.2011)

LOCAL WATERFRONT REVITALIZATION AREA: This area is defined on the maps that are included in the Town's Local Waterfront Revitalization Program (LWRP).

LOCAL WATERFRONT REVITALIZATION PROGRAM (LWRP): Means provisions of the Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, Article 42) and implementing regulations (6NYCRR 601) concurrent with U.S. Coastal Zone Management Act of 1972 as amended.

LOT: A parcel or area of land, the dimensions and extent of which are determined by the latest official records or recordings.

LOT AREA: The square footage or acreage contained within the boundaries of a lot determined by the latest official records or recordings. Any portion of the lot that includes a public or private road, street or highway right-of-way shall not be included in calculating lot area. Due to continued Lake Ontario erosion, the Lakeshore property lot area used to determine accessory structure ground floor footage shall include only land up to the current embankment at the waters edge.

LOT (CORNER): A parcel of land at the junction of, and fronting on two or more intersecting street, roads, or thoroughfares.

LOT (THROUGH): An interior lot having frontage on two parallel of approximately parallel streets, roads, or thoroughfares.

LOT DEPTH: The mean distance from the center line of the street to the lots opposite rear line measured in the general direction of side lines of the lot.

LOT FRONTAGE: The front of a lot shall be construed to be the portion nearest the highway. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to highways shall be considered frontage, and yards shall be provided as indicated under, "YARDS", in these definitions.

LOT LINE: Any boundary line of a lot.

LOT WIDTH: The width of the lot between side lot lines at the front building line as prescribed by the front

yard regulations.

MARINA: A lot, building, structure, pier, dock or portion thereof located with shoreline frontage and access to navigable water and used for the launching, mooring, rental, sale, fueling and/or repair of watercraft and may include boat storage, boat launch facilities, and such sales of bait, tackle and marine supplies as may be accessory to such marinas. The term “marina” shall include “yacht club,” but shall exclude non-commercial facilities that are accessory to a single or multiple-family residence.

MEGAWATT (MW): A unit of measurement of electrical power equal to one million (1,000,000) Watts.

METEOROLOGICAL TOWERS: (also MET Towers) Any commercial equipment and tower used to collect atmospheric data such as temperature, wind speed and direction. The data is used to evaluate the feasibility of installing COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (CWECS). MET Towers are temporary structures and are intended to be removed at the end of the data collection period.

MICROWAVE TOWERS: Means directional parabolic shaped equipment placed on towers used to transmit "high frequency signals" beamed from one point to another.

MINING: The use of an area of land to remove minerals, metals or other items of value from the ground for a profit, including gas, and oil wells.

MOBILE MANUFACTURED HOME: A factory-manufactured home, built on a permanent steel-framed chassis and designed to be transported to a site in one or more sections, which is intended to be used as permanent living quarters by a single family unit when connected to the required plumbing, heating and electrical utilities. For the purposes of this ordinance, the removal of transport wheels and/or the anchoring of the home to a permanent foundation shall not remove it from this definition. This term shall include double-wide mobile/manufactured homes.

MOBILE HOME PARK: Any site, lot, field, plot, parcel or tract of land on which two (2) or more mobile/manufactured homes are parked or located, and for which either the said premises or mobile/manufactured homes are offered to the public for a fee of any type, including cost sharing. This includes the rental of the said premises and/or the mobile/manufactured homes.

MODULAR HOME: A factory-manufactured home having no permanent support frame and designed to be transported to a site in one or more sections for erection, construction, or installation as a permanent structure. Modular Homes shall be affixed to a permanent site-built foundation and shall meet the requirements of the New York State Uniform Fire Prevention and Building Code. For the purposes of this ordinance, Modular Homes shall be regulated as a dwelling.

MOTEL: A building or group of buildings, whether detached or in connected units, containing transient and/or permanent lodging facilities for 9 or more guests. Accessory facilities such as such as restaurants, meeting rooms, retail business activities and other similar services, which solely accommodate the motel patrons and not the general public, are allowed. The term motel includes buildings designated as auto cabins, auto courts, motor lodges, tourist courts, hotels and similar terms.

MOTOR VEHICLE: Any vehicle designed to be propelled or drawn by power other than muscle power. This term shall include automobiles, trucks, buses, motorcycles, tractor-trailers, motor homes, snowmobiles, garden

and lawn tractors. This term shall not include equipment used solely for agricultural purposes.

MOTOR VEHICLE REPAIR SHOP: A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles for compensation.

NACELLE: Large enclosure placed at the top of supporting tower, housing equipment such as the generator, gearbox, drive train, rotor blades and hub and breaking system. (Amended 08.28.08)

NET-METERING: An exchange of excess electricity between owner of generating facility and utility company. The utility company may accept over generation beyond the owner's needs and allows the metering system to reverse spin, thereby crediting producer under an interconnection agreement (Amended 08.28.08)

NON-CONFORMING USE: A use of land legally existing at the time of enactment of this Ordinance and which does not legally conform to the regulations of the district or zone in which it is located.

NON-CONFORMING LOT, BUILDING, OR STRUCTURE: A lot, building, or structure legally existing at the time of enactment of the Ordinance or any amendment thereto, and which does not conform to the area regulations of the district or zone in which it is situated.

NUDE MODEL STUDIO : Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. (Amended 06.08.06)

NUDITY or STATE OF NUDITY: The appearance of a human bare buttocks, anus, male genitals, female genitals or full female breast. (Amended 06.08.06)

OVERLAY DISTRICT: A district that encompasses one or more underlying districts and that imposes additional requirements above that required by the underlying district. (Amended 08.28.08)

PARKING SPACE: Space available for the parking of one motor vehicle and having an area of not less than 200 square feet (10 by 20 feet), exclusive of passageways and driveways giving access thereto.

PARKING SPACE, OFF-STREET: An off-street area with an appropriate means of vehicular access to a street, intended for the temporary storage of vehicles.

PERMITTEE and/or LICENSEE: A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license. (Amended 06.08.06)

PERMITTED USE: A land use allowed under the regulations of this Ordinance.

PERSON: An individual, proprietorship, partnership, corporation, association or other legal entity. (Amended 06.08.06)

PILOT PROGRAM: (Payment In Lieu of Taxes) A program implemented as replacement of revenue lost to towns by State of New York Tax Exemption Law for renewable energy systems (Real Property Tax Law 487). (Amended 08.28.08)

PREMISE: A tract of land and the buildings and structures thereon. (Amended 08.08.96)

PROFESSIONAL OFFICES: The office or place of business where professional services are offered and does not involve the sale of goods, or the keeping of a stock in trade. Professional offices include but are not limited to, medical doctors, dentists, surgeons, attorneys, architects, engineers, planners, accountants, real estate brokers, insurance brokers, psychologists and chiropractors.

PROFESSIONAL SERVICE: A specific activity performed by a qualified person(s) which requires training and/or specialized study.

PRIVATE AIRPORTS: Airports for the exclusive use of the owner, householder or family members thereof.

PUBLIC AND SEMI-PUBLIC BUILDING AND GROUNDS: This definition is designated to, but not limited to, any one (1) or more of the following uses, including grounds and accessory buildings necessary for their uses:

- 1.) Churches, places of worship, parish houses and convents.
- 2.) Public parks, playgrounds and recreational areas when authorized or operated by a governmental authority.
- 3.) Nursery schools, elementary schools, high schools, colleges or universities.
- 4.) Golf courses and country clubs, however, not including clubs whose activities include the maintenance, storage or takeoffs or landings of aircraft.
- 5.) Public libraries and museums.
- 6.) Not-for-profit fire, ambulance and public safety buildings.
- 7.) Proprietary or not-for-profit hospitals for the care of human beings, nursing homes, convalescent homes, homes for adults, homes for the aged as the same are defined under the Public Health Law or the Social Services Law of New York.
- 8.) Not-for-profit membership corporation established for cultural, social, or recreational purposes.
- 9.) Recreational facilities, either for profit or not-for-profit, such as swimming, tennis, platform tennis, bowling, hockey, ice skating, or other indoor or outdoor sports.

RECREATION AREA: Recreation area is the sum of all open or covered areas used for recreation purposes.

RESIDENTIAL WIND ENERGY CONVERSION SYSTEM: A wind energy conversion system consisting of one wind turbine, one tower, and associated control or conversion electronics, which has a maximum rated capacity of 30 kilowatts (30KW) and a total height not to exceed 65 feet on parcels between two and less than five acres and 120 feet on parcels of five or more acres. (Amended 08.28.08)

RESTAURANT: Any establishment, however designated, at which food or drink is sold for consumption to patrons seated within an enclosed building or on the premises. Restaurants shall be regulated as a Business, Drive-In.

RETAIL, FUEL OUTLET: Any establishment that sells gasoline, diesel, kerosene, propane, or similar fuels to the public. This includes service stations, convenience stores, car washes or any other facility that sells fuels.

RIDING STABLE: Any use housing animal livestock, such as horses, and providing such livestock to the public for riding on a pay per use or fixed fee basis.

RIGHT-OF-WAY: Land set aside for use as a street, alley, or other means of travel.

ROAD, MAJOR: Streets or highways connecting through roads with each other.

ROAD, SECONDARY: Streets or highways connecting through roads with each other.

ROAD, LOCAL: Streets which primarily function to give direct access to abutting property. Local roads are the internal part of the system to provide movement within residential or to other land use areas.

ROADSIDE STAND: A partially enclosed temporary structure generally utilized for the sale of farm produce. Such stands shall be situated so as to permit patrons to drive completely off the roadway while purchasing products. No stand shall operate in excess of six months per year. Any stand operating in excess of six months per year shall be regulated as a Home Business.

SATELLITE PARABOLIC ANTENNAE: A dish-shaped accessory structure capable of receiving, for the sole benefit of the principal use, radio or television signals from a satellite in planetary orbit.

SEASONAL SERVICE RESTAURANT: A restaurant which operates only seasonally and has a seating capacity of twenty five (25) or less people. Included are coffee shops, lunch counters, and ice cream parlors.

SEMINUDE : A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices. (Amended 06.08.06)

SETBACK, BACK: The required open, unoccupied space measured from the rear lot line to the nearest part of the main or accessory structure.

SETBACK, FRONT: The required open space between the center of the road and the front of the main structure, but not including entrance steps. Parcels with Lake Ontario frontage in the Waterfront Development (WD) and Waterfront Residential (WR) Districts shall have their front setbacks measured from the Lake Ontario high water mark. (Amended 08.05.96)

SETBACK, SIDE: The required open, unoccupied space measured from the side lot lines to the nearest part of the main or accessory structure.

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that, as one (1) of its primary business purposes, offers for any form of consideration:

- 1.) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- 2.) Activities between male and female person and / or persons of the same sex when one (1) or more of the person is in a state of nudity or seminude. (Amended 06.08.06)

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio or sexual encounter center. (Amended 06.08.06)

SHADOW AND FLICKER: Effect of sunrays passing the rotating blades of a wind energy generating system similar to the effect of strobe lighting. (Amended 08.28.08)

SHED: See Utility Building (Amended 05.16.2011)

SIGN: Any device, structure, or object for visual communication that is used for the purpose of bringing the subject thereof to the attention of others.

SIGN AREA: The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign.

SITE PLAN: A plan of a lot or subdivision on which is shown topography, location of all buildings, structures, roads, right-of-ways, boundaries, all essential dimensions and bearings, and any other information deemed necessary by the Planning Board.

SITE PLAN REVIEW: A review and approval process, conducted by the Planning Board, whereby Site Plans are reviewed utilizing criteria stated in this Ordinance.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade.

SOUND PRESSURE LEVEL OR SOUND LEVEL (dBA): A logarithmic measurement of sound pressure (sound level) fluctuation produced by a particular source of sound as compared to a reference (background) sound pressure level. Sound pressure shall be expressed in decibels, using A-frequency weighting (dBA), which is the most commonly used standard in the United States for the measurement of environmental noise. With

human hearing, low and high frequency sounds appear to be less loud. A-weighting (A frequency weighting) reduces the level of low and high frequencies to produce a reading that corresponds approximately to what humans hear. The measurement of sound pressure levels shall be performed in accordance with the latest revision of International Standards for acoustic noise measurement techniques for Wind Generators (IEC 61400-11) or other industry accepted procedures. (Amended 08.28.08)

SPECIAL PERMIT USES: Those particular uses which are specifically permitted in a given district only when conditioning criteria enumerated in this Ordinance are met.

SPECIFIED ANATOMICAL AREAS: The male genitals and/or the vulva or more intimate parts of the female genitals. (Amended 06.08.06)

SPECIFIED SEXUAL ACTIVITIES: Includes any of the following:

- 1.) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- 2.) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- 3.) Masturbation, actual or simulated; or
- 4.) Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C above. (Amended 06.08.06)

STOCK ANIMAL: This term shall include horses, cows, goats, sheep, pigs, rabbits, fowl, and other like animals.

STAND ALONE SYSTEM: Not connected to power grid or net-metered. (Amended 08.28.08)

STREETLINE: The limit of the street width or highway right-of-way, whichever is greater.

STRUCTURE: Anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground. For example, structures include buildings, mobile homes, walls, fences, signs, sheds, billboards and poster panels, docks, and/or similar construction types.

SWIMMING POOL: Any body of water, or receptacle for water, having a capability of a depth of eighteen (18) inches or more at any point, used or capable to be used for swimming, bathing, or wading, and permanently installed or constructed either above or below ground.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS: The increase in floor areas occupied by the business by more than twenty-five percent (25 %), as the floor areas exists on date of enactment. (Amended 06.08.06)

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent (50%) of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred.

TAVERN: Any establishment, licensed by the State of New York that engages in the sale for on-premise consumption of alcoholic and non-alcoholic beverages. For the purpose of this ordinance, this use shall be regulated as a Business, Drive-In.

TEMPORARY USE: An activity or use conducted for a specified limited period of time, not exceeding six months. This term shall include those uses incidental to construction projects, festival tents/refreshment stands, temporary real estate sales offices incidental to a subdivision project, and similar type uses.

TOTAL HEIGHT: (also TIP HEIGHT or MAXIMUM OVERALL HEIGHT) The vertical distance from the pre-construction or post construction grade, whichever is lower, at the tower base to the highest point (apex) of the rotor blade. (Amended 08.28.08)

TOWER: The support structure, including guyed, monopole and lattice types, upon which a wind turbine, nacelle, generator and other mechanical and electrical devices are mounted. (Amended 08.28.08)

TOWER HEIGHT: The vertical distance from the pre-construction or post construction grade, whichever is lower, at the tower base to the center of the horizontal axis of the rotor blade. (Amended 08.28.08)

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS: Includes any of the following:

- 1.) The sale, lease or sublease of the business;
- 2.) The transfer of securities, which constitute a controlling interest in the business whether by sale, exchange or similar means; or
- 3.) The establishment of a trust, gift or other similar legal devices which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Amended 06.08.06)

TRANSMISSION LINES: Conductive lines delivering derived power to the electrical grid. These conductors of electrical energy can be installed underground and overhead. (Amended 08.28.08)

USE: The specific purposes for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained.

UTILITY BUILDING: A building, also called a shed or utility shed, made of wood, metal, masonry or man-made materials, used for the storage of personal property. Sheds and utility buildings do not require a wood or cement base or a foundation but must be anchored in such a manner as necessary to militate against wind damage. A utility building shall not be used as a garage for the purpose of parking automobiles and trucks. (Amended 05.16.2011)

VARIANCE: A variance is any departure from the strict letter of these regulations granted by the Zoning Board of Appeals as it applies to a particular piece of property. Variances run with the land and are not particular to any one landowner.

VERTICAL AXIS WIND TURBINE: (also VAWT) One or more mechanical devices, such as wind turbines, with multiple caged blades which are designed and used to convert the kinetic energy of wind into a usable form of energy. The turbine rotates on a vertical axis. The VAWT includes all parts of the system except the tower and transmission equipment. (Amended 08.28.08)

WATER DEPENDENT USES: Land uses, structures, and/or economic activities that would not exist without a waterfront location.

WATER ENHANCED USES: Land uses that receive added value or importance because of proximity to a shoreline, often functioning as support services for water uses and water dependent uses.

WATERFRONT: Property that has a shoreline which physically touches public waterways or large bodies of water. Ponds shall be excluded from this definition. (Amended 05.16.2011)

WIND ENERGY OVERLAY DISTRICT: An overlay district which encompasses part or parts of one or more underlying districts and establishes requirements limited to Commercial Wind Energy Conversion Systems. (Amended 08.28.08)

WIND ENERGY FACILITY: Any Wind Energy Conversion System, including Commercial Systems, Agricultural Systems, Residential Systems or Meteorological Towers (MET Towers), including all related infrastructure, electrical lines and substations, access roads, and accessory structures. (Amended 08.28.08)

WIND ENERGY CONVERSION SYSTEM: The equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation or support, generator, infrastructure, nacelle, rotor, tower, transformer, turbine, vane, wire, substation, or control facilities or other components used in the system. The turbine or windmill may be on a horizontal or vertical axis. A wind energy conversion system may consist of one or more wind turbines. (Amended 08.28.08)

YARD: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward except as otherwise provided herein.

YARD, FRONT: The space within and extending the full width of the lot from the front lot line to the part of

the principal building which is nearest to such front line.

YARD, REAR: An open space extended across the entire width of the lot between the rear wall of the principal building and the rear line of the lot, and unoccupied except for accessory building and open porches.

YARD, SIDE: An open space on the lot with a principal building between the principal building and the side line of the lot extending through from the front yard to the rear yard, into which space there shall be no extension of building parts other than two (2) feet for rain water leaders, window sills, and other such fixtures and open steps.

YARD SALE: The temporary displaying of household items and clothing for sale on a yard, porch or in a barn or garage. No yard sale shall continue at the same location in excess of three weeks per year, after which time the provisions of Home Occupation shall be met. This term shall include garage sales, barn sales, porch sales, and sales similar in nature.

ZONING CERTIFICATE OF COMPLIANCE: A certificate issued by the Zoning Officer stating that a structure of the use thereof is in compliance with this Ordinance.

ZONING ENFORCEMENT OFFICER: The official designated to administer and enforce this Ordinance.

ZONING PERMIT: A document issued by the Zoning Officer authorizing the use of lots, structures, uses of land and structures, and the characteristics of the uses in conformity with this Ordinance.

ARTICLE III
PERMITS AND PROCEDURES

SECTION 300 PERMITS REQUIRED

No use or structure shall be established, erected nor land developed until a permit has been issued by the Zoning Enforcement Officer, who shall issue such permits in accordance with regulations in the ordinance. Permit applications shall be filed with the Town Clerk.

SECTION 301 PREAPPLICATION CONFERENCE WITH PLANNING BOARD

Preapplication conferences with the Town's Planning Board are encouraged for all applications seeking permits for non-residential uses or nonfarm uses.

SECTION 302 APPLICATION PROCEDURE AND REQUIRED INFORMATION

- A.) Application: Application must be made with the Town Clerk on forms approved by the Town Board, and be made available at the Office of the Town Clerk, or Zoning Enforcement Officer. For proposed actions that are located within the town's Local Waterfront Revitalization Program (LWRP) area, applications for permits shall be reviewed by the Planning Board in accordance with the approved LWRP, and any amendments thereto, to insure unified development, enhance water-related uses, preserve public access to the waterfront, and promote the overall improvement of the waterfront and its attractiveness. The Planning Board shall recommend approval, approval with conditions, or denial of the application to the Town Board, which shall have final approval authority. A certificate of consistency with the LWRP will be issued by the Town Board prior to the issuance of a permit.
- B.) Information: All information on the application form must be completed. In addition, the following information is also required to constitute a complete application:
- 1.) Map.
Two copies of a property map shall be submitted with all applications. The map shall be either a:
 - a.) Sketch Map
A sketch map is required with all applications for one or two family dwellings, their customary accessory uses, or farm use. The sketch map shall be drawn to scale and show the dimensions and location of the lot, exact size and location of all existing and proposed buildings on the lot, proposed location of water and sewage disposal systems, parking areas and driveway location, natural watercourses, ponds, surface drainage patterns and location of existing or proposed easements.
 - b.) Site Plan:
A site plan is required with applications for all other uses, including application for residential uses in a Historic Zone. The requirements and procedure for site plan approval are in Article X.
 - 2.) Coastal Assessment Form Required. No permit shall be issued in the Local Waterfront Revitalization Program (LWRP) area unless the application is accompanied by a completed Coastal Assessment Form (CAF). Such form shall be reviewed by the Planning Board and certified as consistent with the Local Waterfront Revitalization Program prior to issuance of a Zoning Permit.
- C.) Approval of Water and Sewage Disposal Systems: Evidence of approval of the water supply and the sewage disposal system plans by the Orleans County Health Department, or its agent, must be submitted at the time of application. Applications lacking such information shall not be accepted.
- D.) Evidence of Property Ownership or Intent to Purchase: Copies of deeds, titles, purchase agreements,

or other proof of ownership or intent to purchase must be attached to an application before it will be accepted.

- E.) Licenses: Any use currently licensed by Federal, State, County or Town Agencies and already operating within the Town shall present evidence or currently valid licenses before any expansion permits are considered.
- F.) Fee: The appropriate non-refundable fee established by the Town Board in its fee structure shall be collected at the time of application. This fee structure shall be filed and posted at the Office of the Town Clerk.
- G.) Wind Energy Systems: All additional information as required to complete a wind energy application per SECTIONS 724,727,728 or 729. (Amended 08.28.08)

SECTION 303 BUILDING PERMIT TYPES

Under the terms of this Ordinance, the following types of Building Permits may be issued:

- 1.) Permitted Use. A building permit for a permitted use may be issued by the Zoning Enforcement Officer on his own authority.
- 2.) Special Permit Uses and/or Site Plan Approval. A building permit for a special permit use may be issued by the Zoning Enforcement Officer after special permit or site plan approval from the Planning Board.
- 3.) Building Permit after an Appeal or Request for Variance. A building permit use may be issued by the Zoning Enforcement Officer upon order of the Zoning Board of Appeals after a public hearing as more fully described in Article VIII.

SECTION 304 BUILDING PERMIT GRANTED

When all requirements of this Ordinance have been met, the Zoning Enforcement Officer shall issue a building permit and return one approved copy of the map no later than fifteen (15) days after approval. The Zoning Enforcement Officer shall file one copy of the approved permit in the Town Clerk's office.

SECTION 305 TERMINATION OF PERMIT

Any building permit, or conditional use permit, for which construction or use has not commenced one (1) year after issuance, shall be automatically revoked.

SECTION 306 CERTIFICATE OF CONFORMITY

The applicant shall notify the Town Clerk when the structure or use is ready for final inspection. The Zoning Enforcement Officer shall then make a final inspection. If satisfied that the regulations pertaining to the project have been complied with and that the project has been completed as specified on the approved application, the Zoning Enforcement Officer shall issue a certificate of conformity with the Zoning Laws, granting permission to occupy or use the structure.

SECTION 307 STOP WORK ORDER

A stop work order shall be issued if and when the Zoning Enforcement Officer discovers a project commencing without the required permits

ARTICLE IV
ESTABLISHMENT AND DESIGNATION OF LAND USE DISTRICTS

SECTION 400 ESTABLISHMENT OF DISTRICTS

For the purpose of promoting the public health, safety, morals, and general welfare of the Town of Kendall, the Town is hereby able to be divided into the following types of districts:

- RH - Residential/Hamlet
- RA - Residential/Agricultural
- RR - Rural/Residential
- WD - Waterfront Development
- WR - Waterfront Residential
- IL - Light Industrial
- B - General Business
- C - Conservation
- H - Historic

SECTION 401 ZONING MAP

Said districts are bounded as shown on the map entitled “Zoning Map of the Town of Kendall”, as certified by the Town Clerk. The map and all explanatory matter, is hereby made a part of the ordinance.

SECTION 402 DETERMINATION OF LOCATION OF BOUNDARIES

In case of uncertainty as to the true location of a district boundary line in a particular instance, the Zoning Enforcement Officer shall request the Zoning Board of Appeals to render its determination.

- 1.) Interpretation of District Boundaries: Where uncertainty exists with respect to the boundaries of any of the afore said districts as shown on the Zoning Map of the Town of Kendall, the following rules shall apply:
 - a.) Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
 - b.) Where district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such boundaries.
 - c.) Where district boundaries are indicated as being approximately parallel to the center lines or right-of-way lines of streets or highways, such district boundaries shall be construed as being parallel thereto and at such distances there from as indicated on the zoning map. If no distance is given, such dimensions shall be determined by the use of the scale shown on said zoning map.
 - d.) Where a district boundary is indicated as approximately following a railroad line, such boundary shall be deemed to be located midway between the outer tracks of said railroad line.
 - e.) Where a district boundary is indicated as approximately following a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of the jurisdiction of the Town of Kendall.
- 2.) Split Lots: Where a district boundary line divides a lot in single ownership at the effective date of this Ordinance, the Board of Appeals may permit the less restricted use to extend to the entire lot, but not more than 50 feet beyond the boundary line of the district in which such use is authorized.

ARTICLE V
DISTRICT REGULATIONS

SECTION 500 RESIDENTIAL/HAMLET DISTRICT (RH)

SECTION 501 PURPOSE

The purpose of the Residential/Hamlet District is to recognize that the crossroads community is a unique area where residential and commercial business uses exist in harmony, providing necessary basic services for the residences and businesses in and around the surrounding community. (Amended 05.16.2011)

SECTION 502 PERMITTED USES

Day Care Home (Family)
Home Occupations
One and Two Family Dwellings
Business, Convenience
Professional Offices (Amended 08.05.96)

**SECTION 503 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY
THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)**

Bed and Breakfast
Drive-in Business
Retail Fuel Outlet
Multiple-Family Dwelling
Clubs
Home Business
Essential Services
Public & Semi-Public Buildings and Grounds
Motor Vehicle Repair Shop
Accessory Building Used For Animal Housing
Day Care Center

SECTION 504 PERMITTED ACCESSORY USES

Accessory Structures
Non-wind generated Alternative Energy Systems (Amended 08.28.08)
Roadside Stands
Temporary Structures
Yard Sales
Other Similar Type Uses

SECTION 505 SPECIFICATIONS (Amended 05.16.2011)

Minimum Setback Requirements	
Front (See Note 1):	35 Feet from Town roads 26.5 feet from County and State highways
Side:	15 feet
Rear:	20 feet (principal and accessory structures)
Lot Width:	100 feet
Road Frontage:	100 feet
Minimum Lot Size:	20,000 Square Feet with public sewer, or a lot size sufficient to provide Health Department specifications for adequate sewage/septic disposal
Building Height:	35 Feet (except Agricultural Storage Facilities)

Note (1): Front setbacks are to be measured either from the right-of-way or measured from the center of the public roadway in existence at the time of the application. If measured from the center of the roadway, add 24.5 feet for Town roads, 33 feet for County highways and 33 feet for State highways.

SECTION 506 OTHER PROVISIONS AND REQUIREMENTS

- A.) Buffer Strip. Commercial structures shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.
- B.) Refuse Containers. Commercial structures shall provide a commercial type refuse container on site. Such containers shall be placed on concrete or/stone areas and visually screened, and shall provide rodent control.
- C.) All accessory structures must be located at or behind the front main foundation on the same parcel as the principal building. (Amended 05.16.2011)
- D.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises shall be allowed. The maximum allowed ground floor footage of an accessory building shall be determined by calculating the rate of 5% of the lot area in square feet, excluding all right-of-ways, and shall not exceed a total of 1200 square feet in size. (Amended 05.16.2011)
- E.) Sheds used for the storage of personal property shall be allowed. (Amended 05.16.2011)

SECTION 507 RESIDENTIAL/AGRICULTURAL DISTRICT (RA)

SECTION 508 PURPOSE

The purpose of the Residential/Agricultural District is to protect agricultural lands and uses from incompatible uses and development, and to promote development in areas best suited by reason of the availability of public services.

SECTION 509 PERMITTED USES

Agriculture and Agri-Business
Agricultural Wind Energy Systems (Amended 08.28.08)
One and Two Family Dwellings
Home Occupation
Riding Stables
Day Care Home (Family)

SECTION 510 PERMITTED ACCESSORY USES

Accessory Structures
Non-wind generated Alternative Energy Systems (Amended 08.28.08)
Public Garages
Roadside Stand
Temporary Structures
Yard Sales
Other Similar Type Uses

SECTION 511 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

Home Business
Airports
Camp Grounds
Day Care Center
Commercial Wind Energy Systems (Amended 08.28.08)
Excavation and Mining
Farm Labor Camps
Kennels
Essential Services
Bed and Breakfast
Mobile/Manufactured Home Park
Motor Vehicle Repair Shop
Residential Wind Energy Systems (Amended 08.28.08)

SECTION 512 SPECIFICATIONS

Setback Requirements:

Front: 90 Feet

Side: 30 Feet

Rear: 30 Feet

Frontage: 200 Feet

Minimum Lot Size: 60,000 Square Feet (Amended 08.05.96)

Height: 35 Feet except Agricultural Storage Facilities and Airport Structures.

SECTION 513 RURAL RESIDENTIAL DISTRICT (RR)

SECTION 514 PURPOSE

The purpose of the Rural Residential District is to provide a stable environment for rural residential development, free from incompatible uses. Uses in this district are either served by public-water and/or sewer or have land densities high enough to support such facilities if growth occurs.

SECTION 515 PERMITTED USES

Agriculture and Agri-Business

Agricultural Wind Energy Systems (Amended 08.28.08)

One and Two Family Dwellings

Recreation Areas

Home Occupation

Day Care Home (Family)

Business, Convenience

SECTION 516 PERMITTED ACCESSORY USES

Accessory Structures

Non-wind generated Alternative Energy Systems (Amended 08.28.08)

Roadside Stands

Temporary Structures

Yard Sales

Other Similar Type Uses

SECTION 517 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

Commercial Wind Energy Systems (Amended 08.28.08)

Home Business

Motor Vehicle Repair Shop

Day Care Centers

Multiple Family Dwellings

Essential Services

Bed and Breakfast

Public & Semi-Public Buildings and Grounds
Residential Wind Energy Systems (Amended 08.28.08)

SECTION 518 SPECIFICATIONS

Setback Requirements:

Front: 90 Feet

Side: 25 Feet

Rear: 25 Feet

Frontage: 140 Feet

Height: 35 Feet

Minimum Lot Size: 20,000 Square Feet with Public Sewer; 28,000 Square Feet with Septic Tank System

SECTION 519 GENERAL BUSINESS DISTRICT (B)

SECTION 520 PURPOSE

The purpose of the General Business District is to provide for business establishments serving the needs of area residents, especially retail and service businesses. Permitted uses are intended to create a business district free from conflicting land uses.

SECTION 521 PERMITTED USES

Agriculture & Agri-Business
One and Two Family Dwelling
Day Care Home (Family)
Recreation Areas
Home Occupations
Business, General
Business, Service
Business, Convenience
Professional Offices

SECTION 522 PERMITTED ACCESSORY USES

Accessory Structure
Non-wind generated Alternative Energy Systems (Amended 08.28.08)
Public Garages
Temporary Structure
Other Similar Type Uses

SECTION 523 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

Motels and Hotels
Motor Vehicle Repair Shop

Essential Services
Automobile Sales/Rental
Home Business
Day Care Centers
Multiple Family Dwelling
Bed and Breakfast
Public and Semi-Public Building and Grounds
Residential Wind Energy System (Amended 08.28.08)

SECTION 524 OTHER PROVISIONS AND REQUIREMENTS

- A.) Buffer Strip: Commercial structures shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.
- B.) Refuse Containers: Commercial structures shall provide a commercial type refuse container on site. Such containers shall be placed on concrete or stone areas and visually screened, and shall provide rodent control.
- C.) Residential Lot Line: No commercial structure shall be permitted within fifty (50) feet of the nearest lot line of any residential district.
- D.) Off-street parking, loading and unloading facilities subject to the provisions of Article VI of this ordinance.
- E.) One (1) sign shall be permitted per business for each street and parking area upon which said use fronts. Said sign shall not exceed thirty-two (32) square feet.

SECTION 525 SPECIFICATIONS

Setback Requirements:

Front: 50 Feet
Side: 15 Feet
Rear: 50 Feet
Frontage: 100 Feet
Height: 35 Feet

Minimum Lot Size: 20,000 Square Feet with Public Sewer, or a lot size sufficient to provide Health Department Specifications for adequate sewage/septic disposal.

SECTION 533 LIGHT INDUSTRIAL DISTRICT (IL)

SECTION 534 PURPOSE

The purpose of the Light Industrial District is to provide for light manufacturing, assembly and storage type facilities.

SECTION 535 PERMITTED USES

- A.) The following are permitted uses:
 - Agriculture and Agri-Business
 - Day Care Home (Family)
 - Recreation Areas

Business, Service
Business, General
Business, Convenience
Professional Offices

- B.) Scientific research or experimental development of materials, methods or products including engineering and laboratory research.
- C.) Administrative, educational and other related activities and facilities in conjunction with a permitted use.
- D.) Manufacture or assembly of electric, electronic or optical instruments or devices.
- E.) Light manufacturing, assembling, fabricating or packaging of products from previously prepared materials such as cloth, plastic, paper, leather, precious or semi-precious metals or stone.
- F.) Manufacturing of food products, pharmaceuticals and the like but not including the production of fish, meat or dairy products, or fermented foods such as sauerkraut, vinegar, or the like, the rendering of fats and oils.
- G.) Precision machining, tool and die work.
- H.) Other uses which, in the opinion of the Zoning Board of Appeals are similar in nature and scale to those permitted above.

SECTION 536 PERMITTED ACCESSORY USES

Accessory Structures
Alternative Energy Systems
Public Garages
Temporary Structures
Other Similar Type Uses

SECTION 537 PROVISIONS AND REQUIREMENTS

- A.) All assembly, research, engineering, administration, storage and other related activities shall be conducted wholly within enclosed buildings.
- B.) At no time shall any use result in or cause dissemination of dust, smoke, smog, observable gas, fumes, odors, radiation or other atmospheric pollution, objectionable noise, glare or vibrations or hazard of fire or explosive or any other physical hazard to any adjacent buildings or to any plant growth or any land adjacent to the site.
- C.) The architectural treatment and general appearance of all buildings and grounds shall be in keeping with the purpose of this district and shall be of such quality and design as to be a visual asset to the area in which they are located as well as to adjacent development.
- D.) Off-street loading facilities shall be subject to provisions of Article VI Section 607 of this Ordinance.
- E.) Industrial structures shall be located so as to be a minimum of seventy-five (75) feet from any non-industrial district. A natural buffer strip shall be placed and maintained so as to provide visual screening and separation between industrial and non-industrial uses.
- F.) Signs shall be permitted for advertising industrial activities on the premises which shall not exceed in aggregate, five (5%) percent of the area of the front facade of the building. Such signs may be illuminated but shall not be of the flashing type.

SECTION 538 SPECIFICATIONS

Setback Requirements:

Front: 100 Feet

Side: 50 Feet

Rear: 50 Feet

Height: 35 Feet

Frontage: 200 Feet

Minimum Lot Size: One (1) acre.

SECTION 549 CONSERVATION DISTRICT (C)

SECTION 550 PURPOSE

The purpose of the Conservation District is to protect the unique and irreplaceable wetlands, wildlife habitats, geological formations, lakeshores, and stream banks of the Town of Kendall.

SECTION 551 APPLICABILITY

- A.) The Conservation District is an overlay zone designated on the Zoning Map of the Town of Kendall. The district includes all Freshwater Wetlands over 12.4 acres, and those of smaller areas which have been determined to be of unusual local importance as defined and protected by Article 24 and Title 23 of Article 71 of the Environmental Conservation Law - the Freshwater Wetlands Act.
- B.) The provisions of this district take precedence over any other zoning district.
- C.) The Town of Kendall hereby adopts and incorporates by reference (unless contrary to Town Ordinances) the provisions of the Freshwater Wetlands Act that are in effect as of the adoption date of this Ordinance.

SECTION 552 HISTORIC DISTRICT (H)

The purpose of the Historic District is to preserve certain areas of historical or cultural significance in the Town of Kendall. Development in these areas should be consistent with the architectural, cultural, historic character of the area.

SECTION 553 APPLICABILITY

The Historic District is designated on the Zoning Map of the Town of Kendall. The provisions of this district take precedence over any other zoning district (except Flood Hazard and Conservation) to the extent that the provisions of this zone are inconsistent with such other provisions.

SECTION 554 OTHER PROVISIONS AND REQUIREMENTS

- A.) All building permits, including residential exterior alteration resulting in an essential change in the building shall require Site Plan Approval.
- B.) All demolition or substantial exterior alteration resulting in an essential change in the building shall require Site Plan Approval.
- C.) Site Plan Review as conducted by the Town Planning Board must demonstrate the following additional

requirements in its findings.

- 1.) The building or use is consistent with the architecture and historic significance of the area.
- 2.) The building or use does not encroach, diminish or otherwise lessen the significance of other structures or uses within the district.
- 3.) The demolition permits evidence of overwhelming construction or structural problems must be shown to preclude any reasonable effort at rehabilitation, restoration, or preservation. Evidence must be in the form of a written contractor's estimate.
- 4.) The Planning Board may consult historic experts to aid in demonstrating the requirements of Part C, above.

SECTION 555 WATERFRONT RESIDENTIAL DISTRICT (WR)

SECTION 556 PURPOSE (Amended 05.16.2011)

The purpose of the Waterfront Residential District is to recognize the Lake Ontario Shoreline and its tributaries, as a unique resource and to control future growth in a manner which respects the environmental limitations of the waterfront and affords maximum public enjoyment of the area.

The Town of Kendall recognizes the changing needs of the residents along the Lake Ontario Shoreline with cottages turning into larger year round homes and a need for ever larger accessory structures. Property located along the lake shall be classified as:

- 1.) Lakeshore Property
Property that adjoins the Lake Ontario shoreline and is provided access by a Private or Town road that runs parallel to the shoreline.
- 2.) Lakeview Property
Property whose front adjoins the Private or Town road that is shared and common with Lakeshore property.
- 3.) Combined Lakeshore and Lakeview property
Lakeshore property that is combined with Lakeview property to increase the size of a Lakeshore lot. A Private or Town road generally goes through the middle of the combined lots and provides access to the property.

The Town of Kendall recognizes and wishes to preserve and protect the unique scenic character of the Lake Ontario shoreline. The Town of Kendall also recognizes the importance of maintaining view lines to the lake from Lakeshore residences by ensuring that future development may not obstruct view lines.

Shoreline Vistas

In order to establish the importance of maintaining the view lines and vistas of residences with lakeshore property the following requirements shall be used to maintain shoreline vistas:

- 1.) During a site plan review of a building permit application, the Zoning Enforcement Officer shall determine vista site lines. A vista site line shall be based on the set backs of the front main foundations of principal structures, limited to three lot widths on each side of the new construction, and shall be used as a "shoreline three-lot-width vista".
- 2.) The placing of a principle structure, accessory structure, or building addition closer than the setback of neighboring properties that has the effect of reducing a three-lot-width vista site line shall not be allowed.
- 3.) Adding additions to existing primary or accessory structures must not affect nor obstruct the existing vistas as observed from the front main foundation of primary residence within the "shoreline three-lot-width vista".

- 4.) If setbacks, required to comply with the Lot Front Setback, New York State Coastal Erosion Hazard Area Act, New York State Building Codes, or Orleans County Health Department are met and allow a structure to be placed closer to the shoreline than the “shoreline three-lot-width vista”, the shoreline vista site line shall govern and become the minimum setback requirement.
- 5.) If setbacks, required to comply with Front Lot Setbacks, New York State Coastal Erosion Hazard Area Act, New York State Building Codes or the Orleans County Health Department, require that the front setback be placed closer to the shoreline than the neighboring front foundations or “shoreline three-lot-width vista”, the mandated setbacks shall govern the vista requirements.

SECTION 557 PERMITTED USES

One and Two Family Dwelling

SECTION 558 PERMITTED ACCESSORY USE

Accessory Structures
 Non-wind generated Alternative Energy Systems (Amended 08.28.08)
 Temporary Structures
 Other Similar Type Structure

SECTION 559 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

(Amended 05.16.2011)

Multiple Family Dwellings
 Essential Services
 Charter Boat Service
 Bed and Breakfast

SECTION 560 SPECIFICATIONS (Amended 05.16.2011)

For the purpose of this section:

- A.) Lakeshore Property shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line that adjoins the Lake Ontario shoreline.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front line and adjoins a Private or Town road which provides access to the lot.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line.
- B.) Lakeview Property (Non-Lakeshore Property) shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line which adjoins a Private or Town road that is shared and common with Lakeshore property and provides access to the lot.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front lot line.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line.
- C.) Combined Lakeshore and Lakeview property shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line that adjoins the Lake Ontario shoreline.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front lot line and a Private or Town road.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line

SPECIFICATIONS (Amended 05.16.2011)
Minimum Setback Requirements

Lakeshore Property (Not combined with Lakeview Property)

Front Setback from mean high water mark	Principal Structure: 60 feet, plus any setback required to comply with the New York State Coastal Erosion Hazard Area Act with the exception of flood and erosion protection structures. See also Section 556 – Vistas.
Side Setback:	5 Feet (principal and accessory structures) See Section 561 subdivision F.
Rear Setback (See Note 1):	20 feet (principal and accessory structures) from Private or Town Road.

Lakeview Property (Non-Lakeshore Property)

Front Setback (roadside) See Note 1:	35 feet (principal and accessory structures) from Private or Town road. 90 feet from the center of a State or County Road. See Section 561 subdivision H.
Side Setback:	5 Feet (principal and accessory structures)
Rear Setback:	20 feet (principal and accessory structures)

Combined Lakeshore and Lakeview Property

Front Setback from mean high water mark	Principal Structure: 60 feet, plus any setback required to comply with the New York State Coastal Erosion Hazard Area Act with the exception of flood and erosion protection structures. See also Section 563 – Vistas.
Side Setback:	5 feet (principal and accessory on Lakeshore side). If an accessory structure is located on the Lakeview side: See Section 568 subdivision C.
Rear Setback:	20 feet (principal and accessory structure) from rear lot line
Distance from Private or town Road (See Note 1):	20 feet (principal and accessory structures) from the lakeshore side of the right-of-way of a Private or Town Road. 35 feet (principle and accessory structures) from the lake view side of the right-of-way of a Private or Town Road.

All other Properties

Minimum Front Setback (non-Lakeshore and Lakeview Property):	90 Feet
Side Setback (non-Lakeshore and Lakeview Property):	25 Feet
Rear Setback:	25 Feet
Minimum Road Frontage:	140 feet
Maximum Building Height:	35 Feet
Minimum Lot Size:	20,000 square feet with public Sewer, 28,000 Square Feet with Septic Tank System or larger if necessary to meet Health Department specifications for adequate sewage/ septic tank disposal.

Note 1:

Front or roadside setbacks are to be measured either from the right-of-way or measured from the center of the public or private roadway in existence at the time of the application. If measured from the center of the roadway, add one half the width of the right-of-way for a private road, town road, county highway or State highway.

SECTION 561 OTHER PROVISIONS AND REQUIREMENTS

- A.) Where applicable, the provisions of the Conservation Overlay District specified in Section 549 shall be maintained.
- B.) Site plans for development in this district shall be designed to preserve the scenic qualities of the shoreline and vistas.
- C.) The use of common easements and cluster development is encouraged to maximize public access to and enjoyment of the lakeshore.
- D.) Roadways shall be planned to provide the most effective access to individual parcels and lots and the land area devoted to roadways should utilize the minimum land area required to provide such access.
- E.) No new roadway or an extension of an existing roadway shall be permitted within three hundred (300) feet of Lake Ontario, except to allow for a private road to be dedicated to the Town or where extreme need is shown or as permitted by law. (Amended 05.16.2011)
- F.) Requirements for Lakeshore property (not combined with Lakeview property): (Amended 05.16.2011)
 - 1.) All accessory structures must be located at or behind the front main foundation on the same parcel as the principal building. For the purpose of this section an attached deck is not considered an accessory structure.
 - 2.) In order to allow construction-type vehicles access to the Lake Ontario shoreline for erosion control or repair and alteration of a structure, the following standard shall apply:
 - a.) Where a lot has a width of 60 or more feet at the time of the enactment of this section, the side yard requirements shall be modified so that one side yard shall have a setback of not less than 5 feet and the other side yard shall have a continuous setback of not less than 12 feet. Where a lot has a width of less than 60 feet at the time of the enactment of this chapter, the side yard requirements shall have a setback of not less than 5 feet. A minimum of ten feet clearance must be maintained between structures located on the same lot and between structures located on adjoining properties.
 - 3.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises shall be allowed. The maximum allowed ground floor footage of an accessory building shall be determined by calculating the rate of 5% of the lot area in square feet, excluding all right-of-ways. The ground floor footage shall not exceed a total of 1200 square feet in size.
 - 4.) An attached private garage may provide living space on the second floor subject to all New York State building codes. A detached garage or other accessory building may not provide living space nor shall be used as a dwelling.
 - 5.) Sheds and similar structures
Sheds, cabanas, gazebos and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and are subject to the following restrictions:
 - a.) Sheds, cabanas, gazebos or similar accessory structure must be erected behind the front main foundation line of the principal dwelling on any lot. All roadside and side setback requirements shall be maintained.

G.) Requirements for accessory structures added to Combined Lakeshore and Lakeview property.

(Amended 05.16.2011)

- 1.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises sited on the Lakeview side of a Private or Town road shall be allowed. The accessory structure shall:
 - a.) Have the maximum ground floor footage of the accessory building be determined by calculating the rate of 5% of the combined lot area in square feet excluding all right-of-ways. The ground floor footage shall be limited in size to no more than 1200 square feet.
 - b.) Not be placed closer than 35 feet to the right-of-way of the Private or Town Road.
 - c.) Not be placed closer to a side property line than 15 feet. For each additional foot the height of such building exceeds 15 feet, the offset from the rear and side property line shall be increased by one foot. Where a lot has a width of less than 60 feet at the time of the enactment of this chapter, the side yard requirements shall have a set back of not less than 5 feet. A minimum clearance of ten feet must be maintained between structures located on the same lot and between structures located on adjoining properties.
 - d.) Not be placed closer than 20 feet to the rear property line.
 - e.) Not be placed closer to a side street center line than 55 feet or ½ the width of the lot, whichever is less.

2.) Sheds and similar structures

Sheds and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and subject to the following restrictions:

- a.) Sheds, cabanas, gazebos or similar accessory structure must be erected behind the front main foundation line of the principal dwelling on any lot. All roadside and side setback requirements shall be maintained.

H.) Requirements for Lakeview property (not combined with Lakeshore property). (Amended 05.16.2011)

- 1.) All accessory structures must be located at or behind the front main foundation on the same parcel as the principal building. For the purpose of this section an attached deck is not considered a structure.
- 2.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises shall be allowed. Maximum ground floor footage of the accessory building will be determined by calculating the rate of 5% of the square feet of the lot size excluding all right-of-ways. Maximum ground floor footage shall not exceed a total of 1200 square feet in size.
- 3.) An attached private garage may provide living space on the second floor subject to all New York State building codes. A detached garage or other accessory building may not provide living space nor shall be used as a dwelling.
- 4.) Sheds and similar structures
Sheds, cabanas, gazebos and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and subject to the following restrictions:
 - a.) All roadside setback requirements shall be maintained.

SECTION 562 WATERFRONT DEVELOPMENT DISTRICT (WD)

SECTION 563 PURPOSE (Amended 05.16.2011)

The purpose in establishing a Waterfront Development (WD) District is to provide for mixed residential, recreational and commercial uses that relate directly to and complement water-dependent and water-enhanced uses, and to accommodate the planned uses of the Town's Local Waterfront Revitalization Program (LWRP).

The Town of Kendall recognizes the changing needs of the residents along the Lake Ontario Shoreline with cottages turning into larger year-round homes and a need for ever larger accessory structures. Property located along the lake shall be classified as:

- 1.) Lakeshore Property
Property that adjoins the Lake Ontario shoreline and is provided access by a Private or Town road that runs parallel to the shoreline.
- 2.) Lakeview Property
Property whose front adjoins the Private or Town road that is shared and common with Lakeshore property.
- 3.) Combined Lakeshore and Lakeview property
Lakeshore property that is combined with Lakeview property to increase the size of a Lakeshore lot. A Private or Town road generally goes through the middle of the combined lots and provides access to the property.

The Town of Kendall recognizes and wishes to preserve and protect the unique scenic character of the Lake Ontario shoreline. The Town of Kendall also recognizes the importance of maintaining view lines to the lake from Lakeshore residences by ensuring that future development may not obstruct view lines.

Shoreline Vistas

In order to establish the importance of maintaining the view lines and vistas of residences with lakeshore property the following requirements shall be used to maintain shoreline vistas:

- 1.) During a site plan review of a building permit application, the Zoning Enforcement Officer shall determine vista site lines. A vista site line shall be based on the set backs of the front main foundations of principal structures, limited to three lot widths on each side of the new construction, and shall be used as a "shoreline three-lot-width vista".
- 2.) The placing of a principle structure, accessory structure, or building addition closer than the setback of neighboring properties that has the effect of reducing a three-lot-width vista site line shall not be allowed.
- 3.) Adding additions to existing primary or accessory structures must not affect nor obstruct the existing vistas as observed from the front main foundation of primary residence within the "shoreline three-lot-width vista".
- 4.) If setbacks, required to comply with the Lot Front Setback, New York State Coastal Erosion Hazard Area Act, New York State Building Codes or Orleans County Health Department are met and allow a structure to be placed closer to the shoreline than the "shoreline three-lot-width vista", the shoreline vista site line shall govern and become the minimum setback requirement.
- 5.) If setbacks, required to comply with the Lot Front Setback, New York State Coastal Erosion Hazard Area Act, New York State Building Codes or Orleans County Health Department, require that the front

setback be placed closer to the shoreline than the neighboring front foundations or “shoreline three-lot-width vista”, the mandated setbacks shall govern the vista requirements .

SECTION 564 PERMITTED USES

- 1.) Uses which depend on proximity, access and/or utilization of the water including, but not limited to, the following:
 - Marinas, boat launch and docks.
 - Boat service, repair, rental and accessories. (Amended 08.05.06)
 - Fishing and tackle equipment.
 - Public recreation and swimming. Flood and erosion protection structures.
- 2.) Uses which are enhanced by a waterfront location and proximity to water-dependent uses including, but not limited to, the following:
 - One and Two Family dwellings.
 - Restaurants and eating establishments.
 - Tourist facilities such as restrooms, snack bars, information area, public cultural and recreation facilities, and places of public assembly. (Amended 08.05.06)
 - Retail and service facilities and professional offices that are complementary to the above uses, provided that no manufacturing or processing shall take place anywhere on the premises.
 - Mixed uses and facilities that are consistent with the above uses, and which are approved by the Planning Board as being consistent with the Local Waterfront Revitalization Program (LWRP).

SECTION 565 PERMITTED ACCESSORY USES

Accessory Structures

Non-wind generated Alternative Energy Systems (Amended 08.28.08)

Temporary Structures

Other Similar Type Uses

SECTION 566 CONDITIONAL USES REQUIRING A SPECIAL PERMIT ISSUED BY THE PLANNING BOARD (SUBJECT TO SPECIAL PERMIT REGULATIONS, ARTICLE VII)

(Amended 05.16.2011)

Campgrounds

Essential Services

Multiple Family Dwellings

Bed and Breakfast

Charter Boat Service

Public and Semi-Public Buildings and Grounds, excluding clubs whose activities include the maintenance, storage, takeoff or landing of aircraft.

SECTION 567 SPECIFICATIONS (Amended 05.16.2011)

For the purpose of this section:

- A.) Lakeshore Property shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line that adjoins the Lake Ontario shoreline.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front line and adjoins a Private or Town road which provides access to the lot.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line.
- B.) Lakeview Property (Non-Lakeshore Property) shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line which adjoins a Private or Town road that is shared and common with Lakeshore property and provides access to the lot.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front lot line.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line.
- C.) Combined Lakeshore and Lakeview property shall be defined as property with:
 - 1.) Lot Line, Front: The linear distance along a lot line that adjoins the Lake Ontario shoreline.
 - 2.) Lot Line, Rear: The lot line opposite and most distance from the front lot line and a Private or Town road.
 - 3.) Lot line, Side: Any lot line other than a front or rear lot line

SPECIFICATIONS (Amended 05.16.2011)

Minimum Setback Requirements: (For Residential Buildings Only)

Lakeshore Property (Not combined with Lakeview Property)

Front Setback from mean high water mark	Principal Structure: 60 feet, plus any setback required to comply with the New York State Coastal Erosion Hazard Area Act with the exception of flood and erosion protection structures. See also Section 563 – Vistas.
Side Setback:	5 Feet (principal and accessory structures) See Section 568 subdivision A.
Rear Setback (See Note 1):	20 feet (principal and accessory structures) from Private or Town Road.

Lakeview Property (Non-Lakeshore Property)

Front Setback (roadside) See Note 1:	35 feet (principal and accessory structures) from Private or Town Road. 90 feet from the center of a State or County Road. See Section 568 subdivision B.
Side Setback:	5 Feet (principal and accessory structures)
Rear Setback:	20 feet (principal and accessory structures)

Combined Lakeshore and Lakeview Property

Front Setback from mean high water mark	Principal Structure: 60 feet, plus any setback required to comply with the New York State Coastal Erosion Hazard Area Act with the exception of flood and erosion protection structures. See also Section 563 – Vistas.
Side Setback:	5 feet (principal and accessory on Lakeshore side). If an accessory structure is located on the Lakeview side: See Section 568 subdivision C.
Rear Setback:	20 feet (principal and accessory structure) from rear lot line
Distance from Private or Town Road (See Note 1):	20 feet (principal and accessory structures) from the lakeshore side of the right-of-way of a Private or Town Road. 35 feet (principle and accessory structures) from the lake view side of the right-of-way of a Private or Town Road.

All other Properties

Minimum Front Setback (non Lakeshore and Lakeview Property):	90 Feet
Side Setback (non Lakeshore and Lakeview Property):	25 Feet
Rear Setback:	25 Feet
Minimum Road Frontage:	140 feet
Maximum Building Height:	35 Feet
Minimum Lot Size:	20,000 square feet with public Sewer, 28,000 Square Feet with Septic Tank System or larger if necessary to meet Health Department specifications for adequate sewage/ septic tank disposal.

All other uses shall have no yard, area or height restrictions except as may be imposed by the Planning Board in accordance with the approved plans and programs for the Local Waterfront Revitalization Program (LWRP), and as approved through special permit and site development review procedures.

Note 1:

Front or roadside setbacks are to be measured either from the right-of-way or measured from the center of the public or private roadway in existence at the time of the application. If measured from the center of the roadway, add one half the width of the right-of-way for a private road, town road, county highway or State highway.

SECTION 568 OTHER PROVISIONS AND REQUIREMENTS

- A.) Requirements for Lakeshore property (not combined with Lakeview property) (Amended 05.16.2011)
- 1.) All accessory structures must be located at or behind the front main foundation on the same parcel as the principal building. For the purpose of this section an attached deck is not considered an accessory structure.
 - 2.) In order to allow construction-type vehicles access to the Lake Ontario shoreline for erosion control or repair and alteration of a structure, the following standard shall apply:
 - a.) Where a lot has a width of 60 or more feet at the time of the enactment of this section, the side yard requirements shall be modified so that one side yard shall have a setback of not less than 5 feet and the other side yard shall have a continuous setback of not less than 12 feet. Where a lot has a width of less than 60 feet at the time of the enactment of this chapter, the side yard requirements shall have a setback of not less than 5 feet. A minimum of ten feet clearance must be maintained between structures located on the same lot and between structures located on adjoining properties.
 - 3.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises shall be allowed. The maximum allowed ground floor footage of an accessory building shall be determined by calculating the rate of 5% of the lot area in square feet, excluding all right-of-ways, and shall be limited in size to no more than 1200 square feet.
 - 4.) An attached private garage may provide living space on the second floor subject to all New York State building codes. A detached garage or other accessory building may not provide living space nor shall be used as a dwelling.
 - 5.) Sheds and similar structures
Sheds, cabanas, gazebos and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and are subject to the following restrictions:
 - a.) Sheds, cabanas, gazebos or similar accessory structures must be erected behind the front main foundation line of the principal dwelling on any lot. All roadside and side setback requirements shall be maintained.
- B.) Requirements for accessory structures added to Combined Lakeshore and Lakeview property.
(Amended 05.16.2011)
- 1.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises sited on the Lakeshore side of a Private or Town road shall be allowed. The accessory structure shall:

- a.) Have the maximum ground floor footage of an accessory building be determined by calculating the rate of 5% of the Lakeshore side of the lot area in square feet, excluding all right-of-ways. The ground floor footage shall not exceed a total of 1200 square feet in size.
- 2.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises sited on the Lakeview side of a Private or Town road shall be allowed. The accessory structure shall:
 - a.) Have the maximum ground floor footage of the accessory building be determined by calculating the rate of 5% of the combined lot area in square feet excluding all right-of-ways. The ground floor footage shall be limited in size to no more than 1200 square feet.
 - b.) Not be placed closer than 35 feet to the right-of-way of the Private or Town Road.
 - c.) Not be placed closer to a side property line than 15 feet. For each additional foot the height of such building exceeds 15 feet, the offset from the rear and side property line shall be increased by one foot. Where a lot has a width of less than 60 feet at the time of the enactment of this chapter, the side yard requirements shall have a set back of not less than 5 feet. A minimum clearance of ten feet must be maintained between structures located on the same lot and between structures located on adjoining properties.
 - d.) Not be placed closer than 20 feet from the rear property line.
 - e.) Not be placed closer to a side street center line than 55 feet or ½ the width of the lot, whichever is less.
- 3.) Sheds and similar structures. (Amended 05.16.2011)
Sheds and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and subject to the following restrictions:
 - a.) Sheds, cabanas, gazebos or similar accessory structures must be erected behind the front main foundation line of the principal dwelling on any lot. All roadside and side setback requirements shall be maintained.
- C.) Requirements for Lakeview property (not combined with Lakeshore property). (Amended 05.16.2011)
 - 1.) All accessory structures must be located at or behind the front main foundation on the same parcel as the principal building. For the purpose of this section an attached deck is not considered a structure.
 - 2.) One private detached garage, carport or barn for the parking of vehicles or storage of property belonging to residents on the premises shall be allowed. Maximum ground floor footage of the accessory building will be determined by calculating the rate of 5% of the square feet of the lot size excluding all right-of-ways. The ground floor footage shall not exceed a total of 1200 square feet in size.
 - 3.) An attached private garage may provide living space on the second floor subject to all New York State building codes. A detached garage or other accessory building may not provide living space nor shall be used as a dwelling.
 - 4.) Sheds and similar structures
Sheds, cabanas, gazebos and similar or other accessory structures are permitted, provided that such structures are incidental to the principal or primary residential use on the property and subject to the following restrictions:
 - a.) All roadside setback requirements shall be maintained.
- D.) Conservation Overlay District - Where applicable, the provisions of the Conservation Overlay District specified in Section 549 shall be maintained.
- E.) Site Plans - Notwithstanding any other provisions of this Ordinance, development within the Waterfront Development (WD) District shall be prohibited except as provided for, and in accordance with Article IX, Special Permits. All applications for development within the WD District must be

accompanied by a Coastal Assessment Form and a Site Plan indicating, in addition to the requirements of Article X, Site Plan Review, that development will not create erosion or flooding or damage or reduction of the aesthetic quality of the waterfront, and will preserve the scenic qualities and vistas of the shorelines within the adopted LWRP area. The application for a Special Permit to establish a use or reuse in the WD District shall be accompanied with three (3) copies of the Site Plan, drawn to scale and showing property lines, the location of the proposed building or buildings, entrances and exits, parking, landscaping, signs and other improvements, and indicating the relationship to the waterfront and adjacent uses and a completed Coastal Assessment Form evaluating the plan's consistency with the Local Waterfront Revitalization Program. The Site Plan, as approved and/or modified by conditions, shall become part of the record.

- F.) Cluster Development - The use of common easements and cluster development shall be encouraged to maximize public access to and enjoyment of the lakeshore.
- G.) Access - Roadways shall be planned to provide the most effective access to individual parcels and lots and the land area devoted to roadways should utilize the minimum land area required to provide such access.
- H.) New Roadways: No new roadway or an extension of an existing roadway shall be permitted within three hundred (300) feet of Lake Ontario, except to allow for a private road to be dedicated to the Town or where extreme need is shown. (Amended 05.16.2011)
- I.) Buffer Strip - Commercial structures shall provide a natural buffer strip to be perpetually maintained so as to provide visual screening and separation between commercial and residential uses.
- J.) Refuse Containers - Commercial structures shall provide a commercial type refuse container on site. Such container shall be placed on concrete or stone areas and visually screened, and shall provide rodent control.
- K.) Residential Lot Line - No commercial structure shall be permitted within fifty (50) feet of the nearest lot line of any resident or residential district.
- L.) Water's Edge - All permanent structures, except docks, boathouses, and similar structures, shall be located at least fifty feet from the water's edge.
- M.) Signs - All signs shall conform to the standards given in this ordinance, Section 601. In addition, all signs shall meet the following standard(s):
 - 1.) No brand-name sponsored sign shall be permitted.
 - 2.) Sample signs shall be available for inspection in the Town Offices.
 - 3.) These signs are indicative of preferred style to enhance the area's quiet fishing atmosphere and rustic quality.
- N.) Storage of Boats at a marina- Storage of boats at a marina is allowed and boats may be dry-docked when repairs are needed. All repairs shall be completed in a timely manner. All stored and dry-docked boats shall be located in areas as may be imposed by the Planning Board in accordance with the approved plans and programs for the Local Waterfront Revitalization Program (LWRP), and as approved through special permit and site development review procedures and shall be screened from neighboring views as much as practical. (Amended 05.16.2011)

ARTICLE VI
REGULATIONS APPLICABLE TO ALL ZONING DISTRICTS

SECTION 600 SIGNS

Signs shall be permitted only according to standards listed below unless otherwise stated in this Ordinance. A building permit is required with the exception of those signs as noted in subsection G., J. and O. of Section 601 below. (Amended 08.05.06)

SECTION 601 GENERAL SIGN STANDARDS

- A.) No sign shall consist of lights which flash, or move, or appear to move.
- B.) No sign shall be higher than the principal building to which it is accessory.
- C.) General advertising signs related to the permitted use of the premises are allowed such as secondary advertisement of products or services
- D.) No sign shall project into a public right-of-way, be less than thirty (30) feet from edge of street/road, create a traffic hazard, be unduly distracting to motorists and pedestrians, or reduce the effectiveness of signs needed to direct the public.
- E.) No sign shall project on a public utility pole or traffic control structure.
- F.) All existing signs that are legal at the time of the enactment of this ordinance shall be allowed to remain as long as they are properly maintained and their use remains current. Replacement of any existing sign for any cause shall be in accordance with the more restrictive clauses of this Ordinance.
- G.) Temporary lighted or unlighted signs erected by and for non-profit organizations such as churches, American Legion, Boy Scouts, Girl Scouts, political organizations, or military reserve associations which advertise suppers, banquets, benefits, fund raising sales, and similar functions may be erected for a period of (40) days without a permit in any district.
- H.) One on-site sign is permitted, not to exceed sixteen (16) square feet per side with a maximum of two printed sides (except as otherwise specified in this Ordinance).
- I.) Signs shall be informative and enhance the rural character of the community. Signs that are manufactured from wood, or wood simulated products, or stone, or stone simulated products (with the appearance of natural wood or stone may be considered as in compliance with this Ordinance. (Amended 08.05.96)
- J.) Permitted are small temporary signs, not to exceed sixteen (16) square feet, placed on premises while artisans, wrights, or makers are performing work on such premises, until thirty (30) days after completion of work.
- K.) Permitted are brand name sponsored signs; provided that the brand name, logo, trademark (or the combination thereof) shall not exceed 25% (twenty five percent) of the square footage of the sign.
- L.) Signs required by Federal, State, County or Town agencies for the operation of the use (such as NYS Motor Vehicle Inspection Station signs) are permitted signs. (Amended 08-05-96)
- M.) Any person desiring to place a sign on premises other than the site of the business advertised must seek approval from the Town Planning Board and may be subject to special conditions.
- N.) No general election signs shall be erected more than 30 days prior to the scheduled Election Day. All signs must be removed within 48 hours of the completed election.
- O.) Signs required by Federal, State, County or Town governments shall be exempt from the provisions found in Section 601 of this Ordinance. (Amended 08-05-96)

SECTION 605 PARKING

This section is designed to reduce problems caused by inadequate or poorly designed parking facilities.

- A.) All uses shall provide adequate off-street parking for all vehicles parked during typical peak periods. Parking should be designed to eliminate the need to back out or to park on the shoulder of public roads.
- B.) A parking space shall be not less than ten by twenty feet (10 by 20 feet), exclusive of accessways and driveways. Single family residences need not exclude driveway area.
- C.) Off-street parking areas for non-residential uses shall provide access lanes to parking spaces. Parking areas for fifty (50) or more vehicles shall delineate fire lanes and include no parking markers.

SECTION 606 MINIMUM PARKING STANDARDS

Minimum standards supplementary to the basic standard cited above are as follows:

- A.) One parking space is required for every three seats in a public meeting place.
- B.) One parking space is required for each employee on the maximum working shift in an industrial or light industrial establishment and one parking space per two hundred and fifty (250) square feet of gross floor area in a commercial establishment unless otherwise specified herein.
- C.) One parking space is required for every two hundred (200) square feet of gross floor area in business and professional offices.
- D.) One parking space is required for every one hundred (100) square feet of gross floor area in supermarkets and self service food stores.

SECTION 607 OFF-STREET LOADING

- A.) At least one off-street loading area shall be provided for each 5000 square feet of gross floor area in commercial or industrial establishments hereafter erected or altered. Each off-street parking area shall be a minimum of 20 feet by 50 feet in dimension.
- B.) Space for off-street loading shall be in addition to space for off-street parking.

SECTION 608 UTILITY SHEDS (Amended 05.16.2011)

A. Small Utility Shed

A small utility shed, not to exceed 10 feet in height or 144 square feet in horizontal area, shall be allowed and shall have the following requirements:

- 1.) A building permit is not required for the construction or installation of a small shed.
- 2.) A small shed does not have to meet the setback requirements of this ordinance and may be erected no less than five (5) feet from the side or rear property line.
- 3.) Small sheds do not require a wood or cement base or a foundation, but must be anchored to protect against wind damage.

B. Large or multiple small sheds.

Utility sheds having dimensions larger than 10 feet in height or 144 square feet in horizontal area or requests for more than one small shed not exceeding 10 feet in height or 144 square feet in horizontal area shall require the issuance of a standard building permit and must comply with all the provisions of

this ordinance, including setback requirements, NYS building codes and all other local laws and statutory provisions.

SECTION 610 FENCES

- A.) Unless otherwise authorized in this Ordinance, fences shall be erected, altered or reconstructed under the following conditions:
- 1.) No fence shall be erected in any Rear Yard higher than six (6) feet above the highest point of ground directly below the fence.
 - 2.) No fence shall be erected in any Side Yard higher than six (6) feet above the highest point of ground directly below the fence.
 - 3.) No fence shall be erected in any Front Yard except for decorative open type fencing, and that to a maximum height of four (4) feet above the highest point of ground directly below the fence.
 - 4.) On corner lots, both yards fronting the joining streets shall be considered Front Yards and shall be subject to the fencing provisions specified in Section 610 A.3. of this ordinance.
 - 5.) The mounding of earth directly below any fence for the purpose of increasing the fence height shall not be permitted. (Amended 08.05.96)
- B.) Fences may be substituted for lot line landscaping during Site Plan Review upon the discretion of the Planning Board.
- C.) No fence shall cause obstruction of vision at street and driveway intersections as determined by the Zoning Enforcement Officer. (Amended 05.16.2011)
- D.) Fencing for farm purposes shall not exceed six (6) feet in height as measured above the highest point of ground directly below the fence. Farm fencing shall be exempt from the yard and height provisions found in Section 610A. of this Ordinance. . (Amended 08.05.06)
- E.) Any fence erected along a lot line shall be erected wholly on the property of the owner and neither the fence itself nor any supporting accessory components thereof shall encroach upon the adjoining properties.
- F.) A finished side of any fencing shall front the neighboring properties.
- G.) Barbed wire, single strand wire or electrification of any fence is permitted for the containment of livestock only, subject to applicable sections of this Ordinance. Electrified fencing products such as “Invisible Fencing~” shall be excluded from this requirement. (Amended 08.05.96)
- H.) All fencing shall be placed on the property so the fence can be maintained on both sides by the fence owner. The ZEO shall determine a reasonable distance from the property line for fence maintenance. (Amended 08-05-96)
- I.) Additional special fencing requirements for Lakeshore and Lakeview Property located within the Waterfront Residential (WR) and Waterfront Development (WD) Districts:
- 1.) General
 - a.) A building permit is required, showing the location of the fence on a tape map, or other map, drawn to scale; and describing the length, height and materials from which the fence is to be constructed.
 - b.) The mounding of earth directly below any fence for the purpose of increasing the fence height shall not be permitted. (Amended 08.05.96)
 - c.) The height of a fence may be altered for the construction and operation of swimming pools within the Waterfront Residential (WR) and Waterfront Development (WD) Districts to allow a pool to conform to all applicable federal, state and local laws and codes, including but not limited to the rules of the state and county boards of health, the New York State Uniform Fire Prevention and Building Code and other applicable codes, rules and regulations. (Amended

05.16.2011)

- d.) Decorative enclosures used to surround propane tanks, backup generating systems, other similar uses, shall be constructed to be minimal in nature and shall be limited in height and width to only block the view of enclosed items. (Amended 05.16.2011)
- e.) Screens to create privacy for outdoor hot tubs or other similar uses shall be constructed to be minimal in nature and limited in height and width to only create privacy. This screening shall extend from the front foundation and shall be limited to no more than eight feet in length and six feet in height. (Amended 05.16.2011)

2.) Lakeshore Property. (Amended 05.16.2011)

- a.) Fences, decorative enclosures, privacy vegetation, shrubbery type vegetation, trees and or natural buffers must be planted or constructed to retain views to the Lake Ontario Shoreline and must not affect or obstruct the views of the shoreline. No fence shall be allowed closer to the lake than 10 feet from the waters edge.
- b.) No fence shall be erected in any yard that adjoins the Lakeshore in the WR or WD Districts higher than three (3) feet above the highest point of ground directly below the fence.
- c.) No fence shall be erected in any Front Yard except for decorative open type fencing, and not to exceed a maximum height of three (3) feet above the highest point of ground directly below the fence.
- d.) Plantings and shrubbery used as a fence line shall not be allowed to grow higher than three (3) feet above the ground unless maintained in an open and decorative design.

Open design shall mean the area covered by the plantings will be no more than a maximum of fifty (50%) percent opaque as viewed perpendicular to the length of the fence line.

- e.) Plantings and shrubbery may be placed between the side lot line widths of primary structures of adjoining property owners without height restrictions provided the placement does not obstruct the three-lot-width vista site line of any resident.
- f.) Tree plantings are to be randomly spaced and are not to be planted as a fence line or clustered in such a way as to obstruct the lake views from neighboring properties.

Trees in existence at the adoption of this ordinance shall be exempt.

3.) Lakeview Property (Non-Lakeshore Property). (Amended 05.16.2011)

- a.) Fences may be erected, altered or reconstructed to a maximum height of six (6) feet in the side and rear yards, for residential uses. Property whose front lot line and rear lot line both adjoin a Private or Town road shall not erect a fence exceeding a maximum height of three (3) feet above the highest point of ground directly below the fence.
- b.) No fence shall be erected in any Front Yard except for decorative open type fencing, and not to exceed a maximum height of four (4) feet above the highest point of ground directly below the fence.
- c.) Lots without a primary residence but adjoining a lot with a primary residence shall not be allowed to extend a side lot line six foot fence beyond the neighboring front yard.

4.) Combined Lakeshore and Lakeview Property. (Amended 05.16.2011)

- a.) The area of the lot from the Lake shoreline to the Private or Town Road shall be in compliance with the fencing provisions specified in Section 610 I.2. of this ordinance.
- b.) The area of the lot from the Private or Town Road to the rear lot line of the combined lot shall be in compliance with the fencing provisions specified in Section 610 I.3. of this ordinance.

SECTION 620 INDIVIDUAL MOBILE HOMES

- A.) No individual Mobile/Manufactured Home, with the exception of those homes currently located on an individual parcel of land, shall be allowed to locate outside of an approved Mobile/Manufactured Home Park in the Town of Kendall. Refer to Article VII for Mobile/Manufactured Home Park provisions.
- B.) Those individual Mobile/Manufactured Homes located on single lots which lawfully exist at the time of enactment of this Ordinance, shall be allowed to remain subject to the provisions found in Section 640 of this Ordinance.
- C.) Existing Mobile/Manufactured Homes allowed outside an approved Mobile/Manufactured Home Park by Section 620 of this Ordinance, may be replaced with another Mobile/Manufactured Home under the following conditions:
 - 1.) May be replaced only by the owner/occupant.
 - 2.) May not be replaced with a unit more than seven (7) years old.
 - 3.) The replacement unit must meet all applicable federal, state and local standards and codes which were in effect on the date the unit was manufactured.
 - 4.) A Building Permit and Certificate of Compliance is required.
 - 5.) Provisions of Section 640 of this Ordinance do not apply. (Amended 08.05.96)

SECTION 625 CAMPING UNITS

- A.) Camping units shall not be occupied outside of an approved camp ground for more than seventy-two (72) hours on any basis. A special permit may be granted by the ZEO for single camping units to be occupied outside of approved campgrounds for a period not to exceed two weeks in duration per calendar year. (Amended 08.05.96)
- B.) For the purposes of this section improved property shall be land (lot) upon which there is a dwelling that conforms to the articles of this Ordinance.
- C.) No more than two (2) Camping Units may be parked on any property at the same time.
- D.) All Camping Units are to be placed on the side and rear lots of improved property.
- E.) Placement of Camping Units must be in accordance with the setbacks required for buildings in the respective zone of the property.
- F.) The Camping Unit must either have self contained sanitation or be connected to adequate sanitation facilities.

SECTION 630 STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

- A.) The State Environmental Quality Review Act requires that local government examine the environmental impact of all actions they permit, fund, or construct. Article 6 and Part 617 of Title 6 of the New York Code of Rules and Regulations are hereby adopted by reference.
- B.) All Type I actions (6NYCRR Part 617) shall require the submission and review of an Environmental Assessment Form.
- C.) For zoning action reviewed by the Town, the following bodies shall be lead agency, unless otherwise delegated by the Town Board.
 - Zoning Text Amendments - Town Board
 - Zoning District Amendments - Town Board
 - Special Permits - Planning Board

Variances - Zoning Board of Appeals

- D.) If in the opinion of the local lead agency, after review of the Environmental Assessment Form, there appears the potential for a significant environmental impact, the lead agency shall cause the applicant to prepare a Draft Environmental Impact Statement. Review, notice and action on the EIS shall be conducted according to Part 617.
- E.) The local lead agency's review of the action shall include the following procedures and general considerations:
- 1.) If the proposed action is located within the boundaries of the LWRP Area, as is described in Article II, Section 210, and as is shown on the maps of the adopted Local Waterfront Revitalization Program (LWRP) document, a Coastal Assessment Form (CAF) shall be completed and submitted by the applicant along with the application for any zoning action. The completed CAF shall state whether such proposed action may or will not have a significant effect on the coastal environment or on the coastal resources of the community.
 - 2.) Actions for which a Coastal Assessment Form (CAF) have been filed shall be reviewed and certified by the local lead agency as to consistency with the uses and policies of the Local Waterfront Revitalization Program prior to any final determinations being made by the local lead agency. Actions that are inconsistent with the Local Waterfront Revitalization Program shall be denied zoning approval or modified to become consistent with the LWRP. Thereafter the proposed action shall be reviewed and processed in accordance with the provisions of this Article and Part 617 of the Title 6NYCRR.
 - 3.) If the local lead agency determines that the proposed action is not an exempt action, or an action listed in Section 617.12 of Title 6 NYCRR as a Type II action and that it will not have significant effect on the environment or local plans, then the local lead agency shall prepare, file and circulate such determination as provided in Section 617.7(b) of Title 6 NYCRR, and thereafter the proposed action may be processed without further regard to this Article. The determination shall include certification as to consistency with the Local Waterfront Revitalization Program (LWRP) for those actions subject to a Coastal Assessment Form. Certification shall include a review and evaluation of coastal policies in accordance with the adopted Local Waterfront Revitalization Program (LWRP).
 - 4.) The local lead agency shall maintain files that are open for public inspection of all notices of proposed actions, draft and final environmental impact statements, coastal assessment forms, certifications of consistency with Local Waterfront Revitalization Program policies and written determinations.

SECTION 640 NON-CONFORMING USES, LOTS AND STRUCTURES

Lots, structures, uses of land and structures and characteristics of use which lawfully existed at the time of the enactment of this Ordinance and which would be prohibited or restricted under the terms of these regulations may be continued subject to the following provisions:

- A.) Intent. It is the intent of this Ordinance to permit non-conforming uses to continue until they are removed, but not to encourage their survival. A change in the ownership of a non-conforming use, lot or structure shall not affect the right to continue the use. Where a use, lot or structure created before enactment of this Ordinance is rendered non-conforming by the subsequent enactment, the purchaser of the property will have the same rights as the seller. (Amended 08.05.96)
- B.) Enlargement. No non-conforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of the adoption of this Ordinance.

- C.) Unsafe Structures. Any structure or portions thereto declared unsafe by a proper authority may be restored to a safe condition.
- D.) Alterations. A non-conforming structure may not be reconstructed or structurally altered to an extent exceeding in aggregate cost fifty (50%) of the assessed value of the structure, as adjusted to full value, based upon the State Board of Equalization and Assessment rates of said structure, unless the structure shall be changed to a conforming use.
- E.) Restoration. No non-conforming structure damaged by fire or other causes to the extent of more than seventy (75%) percent if its assessed value based upon the State Board of Equalization and Assessment rates, shall be repaired or rebuilt except in conformity with the requirements of these regulations; except residential property owners may rebuild a home on the same foundation area, provided that:
 - 1.) That the property owner provides the Zoning Enforcement Officer an instrument survey demonstrating that the foundation lies totally within the property boundaries.
 - 2.) The owner provides County Health Department approval for the new construction
 - 3.) All other applicable laws are in compliance with the new construction.
- F.) Discontinuance. Whenever a non-conforming use has been discontinued for a period of one (1) year, use shall not thereafter be re-established and any future use shall be in conformity with the provisions of this Ordinance.
- G.) Changes. Once changed to a conforming use, no structure or land so changed shall be permitted to revert to a non-conforming use.
- H.) Displacement. No non-conforming use shall be extended to displace a conforming use.
- I.) Moving. Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the district in which it is located after it is moved.
- J.) Existing Undersized Lots of Record.
 - 1.) Any record lot held in single and separate ownership prior to the adoption of this Ordinance and whose area and/or width and/or depth are less than minimum requirements specified herein for the district, shall be considered as complying with this Ordinance and no variance therefore shall be required provided that: (Amended 08.05.96)
 - 2.) The minimum lot size of land for such non-conforming lot is at least seventy-five by one-hundred fifty feet (75 x 150 feet). (Amended 08.05.96)
 - 3.) In any district where residences are permitted, such undersized, non-conforming lots may be used for not more than one single-family dwelling.
 - 4.) A lot of non-conforming size may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's property.

SECTION 650 PINBALL AND VIDEO GAME ARCADES

- A.) Pinball and video game arcades shall not be permitted as home occupations.
- B.) Arcades shall be closed between the hours of 12:00 midnight and 8:00 a.m.
- C.) No one under the age of sixteen (16) shall be permitted in an arcade while school is in session.
- D.) An owner or responsible person over the age of eighteen (18) must be on the premises during all hours of operations.

SECTION 660 ALTERNATE ENERGY SYSTEMS

This section is intended to reduce impacts on neighboring property owners and health and safety problems which may accompany alternate energy systems.

- A.) Refer to the appropriate SECTION 724, 725, 726, 727, 728, 729 and 730 for all Wind Energy Conversion System standards and requirements. (Amended 08.28.08)
- B.) All energy collection/storage facilities and appurtenant electrical equipment shall cause no undue interference or noise, or glare.
- C.) The height limitations of this ordinance shall not apply to non-wind generated Alternative Energy Systems provided that such structures are erected only to such a height as is necessary to accomplish the purpose for which they are intended, and that such structures do not obstruct solar access to neighboring properties. (Amended 08.28.08)
- D.) Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on the Site or any other property to reduce turbulence and increase wind flow to a Wind Energy Conversion System (WECS). Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on other property not owned by the applicant to enhance solar access. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the solar access or wind flow to any WECS. It shall be the sole responsibility of the facility operator or owner to acquire any necessary solar, wind flow or turbulence easements, or rights to remove vegetation. (Amended 08.28.08)

SECTION 670 HABITATION

All residential habitation shall be in residential dwellings as defined in this Ordinance. No basement sited independently of a structure shall be habited as a dwelling.

SECTION 675 EMERGENCY HOUSING

The ZEO shall have the authority to issue a temporary permit for emergency housing when the principal residential dwelling is deemed uninhabitable by local, state or federal authorities due to fuel spills, fire, or other similar environmental or natural disasters.

The temporary permit shall have a term of 4 consecutive months, and shall be renewed up to a maximum of two times at the discretion of the ZEO. Each renewal shall be 4 consecutive months in duration. Individual mobile/manufactured homes or other types of housing units approved by the ZEO shall be allowed to be used as emergency housing.

The temporary permit shall be issued by the ZEO only if the following conditions are complied with in full:

- 1.) The emergency housing is connected to an acceptable water supply system (water line, holding tank, etc.) and an acceptable sewage disposal system (holding tank, leach field, etc.).
- 2.) A bond in the sum of \$5000.00 shall be posted by the applicant to assure the emergency condition is promptly corrected, and to assure the immediate removal of the temporary housing unit from the property upon correction of the emergency condition. (Amended 08.05.96)

SECTION 680 SWIMMING POOLS

Swimming pools may be installed only as accessory structures to a dwelling for the private use of the owners or occupants of such dwelling and their families and guests. No swimming pool shall be installed or maintained unless:

- A.) Such pools are installed in the rear of or side yard of the premises, unless hardship is shown.
- B.) The setbacks from the side and rear lot lines shall be at least fifteen (15) feet.

- C.) Anything in this Ordinance to the contrary notwithstanding, for inground pools, there shall be erected and maintained a good quality fence four (4) feet in height, enclosing the entire portion of the premises upon which such pool exists, shall be installed and entirely surrounding the area in which such pool is located.
- D.) Every gate in a fence enclosing any pool, except an opening through the dwelling or other main building of the premises, shall be self-closing and self-latching as required in the NYS Uniform Fire Prevention and Building Code. Ladders on all above ground pools shall be retractable or capable of being locked at all times the owner or occupant of the premises is not present at such pool.
- E.) This section does not apply to farm ponds or other natural or artificial made bodies of water located in residential areas.

SECTION 690 SATELLITE PARABOLIC ANTENNAE

This section is intended to provide the minimum level of control necessary to accomplish the health, safety, and aesthetic objectives of the town. The provisions in this section of the Ordinance shall only be applicable to satellite parabolic antennae where the dish dimension measures greater than 36” in diameter. Any antennae dish measuring 36” or less in diameter shall be exempt from the requirements found in this section of the Ordinance. (Amended 08.05.96)

- A.) All parabolic antennae shall be located on the ground at natural grade only and shall not be installed on or above any buildings.
- B.) All parabolic antennae will be located in rear yards, except they may be placed in a front yard if a 200 foot setback from the front lot line can be obtained.
- C.) One parabolic antennae shall be allowed per lot.

SECTION 695 HOME OCCUPATIONS

- A.) No person other than a member of the immediate family occupying such dwelling shall be employed full-time as part of the home occupation.
- B.) No direct sales of products or merchandise from the home is allowed.
- C.) There shall be no outdoor storage or display of materials, goods, supplies or equipment related to the operation of the home occupation.
- D.) The use may increase vehicular traffic flow and parking by no more than one additional vehicle at a time, such parking shall be provided off the street and other than in a required front yard.
- E.) In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs or the emission of sounds, noise, or vibration.
- F.) The use shall not generate traffic, parking, noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.
- G.) One nameplate shall be allowed. It may display the name of the occupant and/or the name of the home occupation. It shall not exceed one (1) square foot in area and attached to the structure.
- H.) No more than twenty-five (25%) percent of the gross floor area of the residence shall be used for the conduct of a home occupation.
- I.) Only one (1) commercial type vehicle may be used in connection with the home occupation.

ARTICLE VII
SPECIAL PERMIT USE REGULATIONS

Special Permit Uses in Article VII have permit renewal terms of 2, 3 or 5 years. Permit renewals shall be issued by the Zoning Enforcement Officer, provided the use continues to comply with all conditions of the original permit. However, the Planning Board may re-evaluate and/or revoke any special permit prior to its renewal date if flagrant and/or persistent violations of the special permit conditions are identified and confirmed by the Zoning Enforcement Officer.

SECTION 700 AIRPORTS

An application for the establishment, construction, enlargement or alteration of an airport shall include, in addition to requirements for special use permits outlined in Article IX, the following statements and information:

- A.) Name and address of the proponent.
- B.) Classification of the proposed airport, such as commercial, non-commercial, or restricted.
- C.) Number of aircraft expected to be based at the airport initially and within five years.
- D.) Type of aircraft expected to be based at the airport initially and within five years.
- E.) Whether an instrument approach procedure will be offered.
- F.) Statement as to the anticipated number of daily operations.
- G.) Copy of the airspace clearance granted by the Federal Aviation Administration for this airport, including USGS topographic map.
- H.) A copy of the New York State Commissioner of Transportation's determination that the airport is in compliance with the provisions of Section 249 of the New York State Business Law.
- I.) A site plan of the airport which includes the following in addition to the requirements listed in Article X:
 - 1.) Scale no smaller than one inch equals one hundred feet (1" = 100').
 - 2.) Location of all existing and proposed structures.
 - 3.) Alignment of existing and/or proposed runways shown in their exact location.
 - 4.) Location of aircraft parking and tie-down areas.
 - 5.) Provision for vehicular access and off-street parking.
 - 6.) Location and method of all fuel storage facilities.
- J.) An area map at a scale of no less than one inch equals five hundred feet (1" = 500') showing:
 - 1.) Distances to power lines, or other possible obstructions, within two thousand (2,000) feet of the ends of runways shall be accurately plotted.
 - 2.) Properties within five hundred (500) feet shall be plotted and owners identified by name.
- K.) The special permit term for public airports shall be 5 years.
- L.) The Planning Board may in its discretion exclude from the requirements of paragraph I above, any private airport established, constructed or maintained by an individual on his own property for his personal or hobby use; provided, however, that the following conditions are met:
 - 1.) The average number of hours that the airport is in use each week does not exceed twelve hours.
 - 2.) The individual owns no more than three planes, none of which is designed to accommodate more than six persons, including the pilot.
 - 3.) The Planning Board may in its discretion require the applicant to submit proof that the requirements of Section 249 of the General Business Law are otherwise complied with, depending on the proposed airports proximity to highways and other airports.

- 4.) The special permit term for a private airport shall be 5 years.

SECTION 701 CAMPING GROUNDS

Camping grounds shall be occupied only by travel trailers, pick-up coaches, motor homes, camping trailers, recreational vehicles, and tents suitable for temporary habitation and used for travel, vacation and recreation purposes. The removal of wheels and placement of a unit on a foundation in a camping ground is prohibited.

- A.) Minimum Lot Size: Ten (10) acres. (Amended 08.05.96)
- B.) Not more than ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross campground area. (Amended 08.05.96)
- C.) A camping ground shall be so located that no entrance or exit from an individual campsite shall discharge traffic into any residential area. A camping ground shall have a minimum of one hundred fifty (150) feet of frontage on a public street. (Amended 8.05.96)
- D.) Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants. The site shall not be exposed to objectionable smoke, noise, odors, or to other adverse influences, and no portion of the camping grounds subject to flooding, subsidence or erosion shall be used for any purpose which would expose persons or property to hazards.
- E.) Management headquarters, recreational facilities, toilets, dumping stations, showers, coin-operated laundries, and other uses and structures customarily incidental to the operation of camping grounds are permitted as accessory uses to the camping grounds. In addition, retail stores and other convenience establishments shall be permitted as accessory uses in camping grounds in such districts where such uses are not allowed as principal uses, subject to the following restrictions.
- 1.) Such establishments and the parking areas primarily related to their operations shall not occupy more than five (5) percent of the gross area of the camping ground. Such establishments shall be restricted in their use to occupants of the camping ground.
 - 2.) Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character which would attract customers other than occupants of the camping ground.
 - 3.) The structures housing such facilities shall not be directly accessible from any public street, and shall be only be accessible from a street within the camping ground.
- F.) Plans for sewage disposal and water supply shall be designed in accordance with standards promulgated by the New York State Department of Health and/or Environmental Conservation, and shall receive approval from said agencies
- G.) Streets in camping grounds shall be private, but shall be constructed with a stabilized travel way and shall meet the following minimum stabilized travel way width requirement:
- One Way with no parking on either side: 12 feet
 - One Way with parking on one side: 24 feet
 - Two Way with no parking on either side: 24 feet
 - Two Way with parking on one side: 36 feet
 - Two Way with parking on both sides: 48 feet
- H.) Each travel-trailer site shall be at least 2500 square feet in area, and shall have a minimum width of forty (40) feet.
- I.) A minimum of eight (8) percent of the gross area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel-trailer, storage area, or utility site shall be counted as meeting recreational purposes.

- J.) Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. An adequate lighting system shall be provided for the camping ground.
- K.) All utilities shall be underground.
- L.) Not less than one covered twenty (20) gallon garbage receptacle shall be provided for each camp site. Garbage and rubbish shall be collected and disposed of as often as may be necessary to insure sanitary conditions.
- M.) All applicable sanitation standards promulgated by the State of New York, County of Orleans, or Town of Kendall shall be met.
- N.) Setbacks. Each building or structure within a camping ground shall comply with the setback regulations applicable to the zoning district in which such camping ground is located, except that travel trailers, campers, tents, motor homes, and the motor vehicles propelling or carrying the same may be located not closer than fifteen (15) feet of any side or rear lot line nor closer than sixty (60) feet to any front lot line.
- O.) The special permit term for this use shall be 5 years.

SECTION 703 CLUBS (LODGES, FRATERNAL ORGANIZATION, ETC.)

- A.) Minimum Dimensional Requirements:
 Minimum Lot Size: 25,000 square feet.
 Minimum Lot Frontage: 120 feet
- B.) Landscaping areas or screening adequate to protect adjacent properties and land uses shall be provided on all side and rear lot lines.
- C.) Minimum parking shall be one per employee and one per each three members.
- D.) Entrances and exit points shall be from major or secondary roads.
- E.) The special permit term for this use shall be 3 years.

SECTION 704 DAY CARE CENTERS

- A.) All Day Care Centers must have an active outdoor play area of 100 square feet per child.
- B.) Outdoor play areas must be appropriately fenced in or otherwise protected from roads and nearby properties.
- C.) No outdoor play equipment may be placed within ten feet of any property line, fence, or structure.
- D.) Minimum parking shall be one (1) space per staff member, plus one (1) space per each five (5) children.
- E.) The special permit term for this use shall be 3 years.

SECTION 705 DRIVE-IN BUSINESS

- A.) The following information shall be submitted as part of the application for site plan approval and for a special use permit for a drive-in business, in addition to that information required in other sections of the ordinance.
 - 1.) The location and dimensions of all structures including buildings, screened trash areas, fencing, and lighting (show direction and level of illumination).
 - 2.) The locations and dimensions of all off-street parking areas and driveways.
 - 3.) Proposed landscaping of site.

- B.) All drive-in businesses shall be a minimum of 200 feet from other such businesses, which distances shall be computed as follows:
 - 1.) For such businesses on the same side of the street, 200 feet measured diagonally between the two (2) closest property lines.
 - 2.) For such businesses on opposite sides of the street, 200 feet measured diagonally between the two (2) closest property corners.
 - 3.) For four-corner intersections, one (1) such business may be located on diagonally opposite corner exclusive of the 200 foot distance requirement.
- C.) All drive-in businesses shall provide suitable storage of trash in areas which are so designated and constructed as to allow no view of the trash storage from the street, to prevent waste paper from blowing around the site or onto adjacent properties or public right-of-way, and to permit safe, easy removal of trash by truck or hand.
- D.) The minimum distance of any driveway to property line shall be fifteen (15) feet.
- E.) The minimum distance between driveways on the site shall be 65 feet measured from the two (2) closest driveway curbs.
- F.) The minimum distance into the site shall be from a street intersection shall be 30 feet measured from the intersection of the street right-of-way to the nearest end of the curb radius.
- G.) Drive-in Businesses adjacent to or integrated in a shopping center or cluster of commercial facilities shall use the common access with other business establishments in that center.
- H.) Exterior lighting proposed for the site shall be planned, erected and maintained so it will not cast direct light or glare upon adjacent properties or public right-of-way. The light source shall not be higher than twenty (20) feet.
- I.) Landscaping and fencing shall be provided in accordance with Section 610 to minimize visual impacts and minimize conflicts with adjacent land uses.
- J.) Water supply and sewage disposal systems shall be reviewed by the Orleans County Health Department.
- K.) The special permit term for this use shall be 5 years.

SECTION 706 ESSENTIAL SERVICES

- A.) Essential services may be allowed as special permit uses in all districts by the Planning Board.
- B.) The Planning Board shall determine the following prior to approving a special permit:
 - 1.) The proposed installation in a specific location is necessary and convenient for the efficiency of the essential services or the satisfactory and convenient provision of service to the area in which the particular use is located.
 - 2.) The design of any building in connection with such facility shall conform to the general character of the area and will not adversely affect the safe and comfortable enjoyment of property rights in the district in which it is to be located.
 - 3.) Adequate landscaping will be provided to create a visual and sound buffer between such facilities and adjacent property.
 - 4.) All new and replacement electric distribution, telephone, cable TV and other lines shall be placed underground.
 - 5.) All services connections from distribution lines to consumers shall be placed underground.
 - 6.) All points of necessary access, or transformers, shall be placed in secure structures at ground level.

- 7.) All major electrical transformer facilities or substations, if above ground, shall be secured by an outer and inner fence, each ten feet from each other at any point; also no transformer or associated switches shall be closer than 100 feet from any lot line.
- C.) The special permit term for this use shall be 3 years.

SECTION 707 EXCAVATION AND MINING

- A.) The applicant shall furnish evidence of a valid permit from the New York State Department of Environmental Conservation pursuant to Title 27, Article 23 of the Environmental Conservation Law when applicable.
- B.) Minimum lot area: Ten (10) acres.
- C.) All buildings and excavation operations shall be located or shall occur not less than 100 feet from any street or property line.
- D.) All equipment used for excavations and processing shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practical, noises and vibrations and dust conditions which are injurious or a nuisance to persons living in the vicinity.
- E.) All operations shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. with no Sunday or legal holiday operations, and except in the case of a public or private emergency or whenever any reasonable or necessary repairs to equipment are required to be made.
- F.) All land which has been excavated must be rehabilitated in accordance with reclamation plans approved by the Planning Board as part of the site development plan review and approval process within one (1) year after the termination of operations, at the expense of the operator.
- G.) A performance bond or some other financial guarantee shall be required to assure that the conditions stipulated in the approval of the special use permit are carried out.
- H.) The Planning Board shall consider the following criteria in their review of the special use permit request:
 - 1.) The current use of the property proposed to be excavated as well as the proposed use of the area subsequent to completion of the excavation and restoration thereof.
 - 2.) The potential short-term and long-term effects of the proposal on the aesthetics and environment of the area or of surrounding areas.
 - 3.) The potential effect that the proposed action will have on agricultural productivity in the area, and its effect on future development in the area.
 - 4.) The amount of time, as estimated by the applicant, that will be required for the completion of the proposed excavation and the restoration of the property.
 - 5.) Noise and/or vibrations that may be created by the proposed operation.
 - 6.) Additional traffic that may be created by the proposed operation. Deleterious effects, if any, on the property in the general area of the proposed operation.
- I.) The special permit term for this use shall be 2 years.
- J.) No persons, firm or corporation shall strip, excavate, or otherwise remove top soil for sale or other use other than on the premises from which taken, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto. Any area of land consisting of more than one (1) acre from which top soil has been removed or covered over by fill shall be seeded to provide an effective cover crop within the first growing season following the start of said operation.

SECTION 708 FARM LABOR CAMPS

- A.) The special permit term for this use shall be 3 years.
- B.) The minimum lot size for a Farm Labor Camp shall be 20,000 square feet for the first four camp occupants, with additional area of land provided for each additional occupant inhabiting the camp thereafter as required by county, state, and federal laws and codes.
- C.) Farm Labor Camps shall comply with the setback regulations applicable to the zoning district in which they are located.
- D.) Labor Camps may only operate during the growing and harvesting season (May to November) except when extraordinary circumstances are shown.
- E.) The Zoning Officer may inspect the camp at any time on one (1) day's notice to assure the provisions of this Ordinance are being complied with.
- F.) The Labor Camp and camp buildings must continually comply with all applicable local, state and federal ordinances, rules and regulations.
- G.) The Planning Board, during site plan review, may take into consideration the general suitability of establishment of a Labor Camp in the particular area required.
- H.) The Planning Board, during site plan review, may take into consideration the general suitability of establishment of a Labor Camp in the particular area requested.

SECTION 709 HOME BUSINESS

- A.) No more than two (2) persons other than a member of the immediate family occupying such dwelling shall be employed.
- B.) There shall be no outdoor storage or display of materials, goods, supplies, or equipment related to the operation of the home business.
- C.) The use shall not generate vehicular traffic in greater volumes than that normal to the zoning district in which the use is located. Minimum parking shall be one space per employee, plus one space for every 300 square feet of gross floor area committed to the business.
- D.) In no way shall the appearance of the structure be altered or the business be conducted in a manner which would cause the premises to differ from its residential character either by the use of colors, materials, construction, lighting, signs or the emission of sounds, noise, or vibrations.
- E.) The use shall not generate noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.
- F.) One sign shall be allowed not to exceed four square feet in area per side with a maximum of two printed sides.
- G.) No more than 40 percent of the gross floor area of a dwelling shall be used for the conduct of a home business. The total gross floor area of a detached accessory structure shall be permitted for use of a home business provided that no part of the business is conducted within the principal structure.
- H.) No more than one commercial vehicle type shall be used in connection with the home business.
- I.) No home business shall be permitted where access is provided only by a shared private road.
- J.) There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.
- K.) Motor vehicle repair shops shall not be deemed a home business.
- L.) A physician or dentist may use a residential structure owned by such practitioner for a professional office, even if he does not reside in such structure, subject to the following:

- 1.) Section 7096, C, O, E, F, H, I, and J shall apply.
 - 2.) No more than four persons, including the practitioner, shall be employed.
- M.) The special permit term for this use shall be 5 years.

SECTION 710 HOTELS AND MOTELS

- A.) Minimum Dimensional Requirements:
 Minimum Lot Size: 2 acres.
 Minimum Lot Width: 250 feet.
 Minimum Front Setback: 100 feet.
 Minimum Side and Rear Setbacks: 50 feet.
- B.) Restaurants, cafeterias, swimming pools, newsstands, pharmacies, barber shops, hairdressers, gift shops, and other personal service shops for the convenience of guests may be permitted as accessory uses. With the exception of an identifying sign for the restaurant, no external evidence of their internal commercial activities is permitted.
- C.) All Motels shall provide a minimum of one parking space for each 100 square feet of gross floor area. Parking areas for more than 50 vehicles shall delineate fire lanes.
- D.) No driveway shall be located less than 50 feet from an intersection, and the use of common access with other similar uses is encouraged.
- E.) No driveway shall be less than 20 feet from a property line.
- F.) The minimum distance between driveways on the site shall be 70 feet, measured in a straight line between the two closest curbs.
- G.) No driveway shall be less than 20 feet in width.
- H.) All Motels shall provide a commercial type refuse container on site. Such containers shall be placed on a concrete or stone pad, visually screened from view, and shall provide adequate rodent control measures.
- I.) No exterior light source shall be erected in excess of 50 feet above the ground, and shall be placed so as to not cast direct light or glare on adjacent properties.
- J.) Landscaping and/or fencing shall be provided to minimize visual conflicts with adjacent land uses. All fencing shall comply with Section 610.
- K.) All signage shall comply with Section 600 and 601 of this Ordinance.
- L.) Water supply and sewage disposal systems shall be reviewed and approved by the Orleans County Health Department.
- M.) The special permit term for this use shall be 5 years.

SECTION 711 JUNK YARDS

The provisions of the State Junkyard Law (General Municipal Law, Section 136, as amended) are hereby adopted by reference and shall apply to all junk yards as defined in this Ordinance. The expansion or alteration of existing junk yards shall also be governed by the provisions of this section.

- A.) Minimum Dimensional Requirements:
 Minimum Lot Size: 5 acres.
 Maximum Lot Size: 15 acres
 Minimum Lot Width: 300 feet.
 Minimum Front, Side and Rear Setbacks: 100 feet
- B.) A junk yard shall be completely surrounded with a fence (or screen) at least eight feet in height which

completely screens the junk yard from public view and with a suitable gate which shall be closed and locked except during the working hours of such junk yard or when the applicant or his agent shall be within. Such fence shall be erected no nearer than the required setbacks.

- C.) All junk stored or deposited by the operator shall be kept within the enclosure of the junk yard except as removal shall be necessary for the transportation of same in the reasonable course of business.
- D.) The special permit term for this use shall be 2 years.

SECTION 712 KENNELS AND ANIMAL HOSPITALS

- A.) Minimum Dimensional Requirements:
 - Minimum Lot Size: 75,000 square feet. (Amended 08.05.96)
 - Minimum Lot Frontage: 250 feet.
- B.) Adequate landscaping of fencing shall be provided to create a visual, sound and smell buffer between such facilities and adjacent properties.
- C.) All buildings, structures or other accessory uses shall be at least seventy-five (75) feet from any property line.
- D.) All animals shall be kept within a totally enclosed building between 8:00 p.m. and 6:00 a.m.
- E.) Lot coverage shall not exceed fifty (50) percent.
- F.) Entrance and exit points shall be from major or secondary roads only.
- G.) One parking space shall be provided for each employee and one space for every three kennel runs at all kennels and animal hospitals.
- H.) The special permit term for this use shall be 3 years.

SECTION 713 MOBILE/MANUFACTURED HOME PARK

- A.) The special permit term for this use shall be 5 years.
- B.) The minimum site area of proposed mobile/manufactured home parks shall not be less than twenty (20) acres.
- C.) Individual mobile/manufactured home lots shall have an area of not less than 10000 square feet. Each individual lot shall front on an interior park roadway and have a minimum width of 75 feet.
- D.) Minimum Dimensional Requirements:
 - Minimum Front Setback: 25 feet.
 - Minimum Side Setback: 20 feet.
 - Minimum Rear Setback: 10 feet.
- E.) The minimum setbacks of every mobile/manufactured home, building or other structure in a park from the nearest public street line shall be seventy (70) feet, and from every other lot line of the park shall be forty (40) feet.
- F.) Not more than one (1) mobile/manufactured home shall be located on any one (1) individual lot. Every mobile/manufactured home within a park shall be located on a mobile/manufactured home lot shown on the approved site plan for said park.
- G.) At least one (1) framed service building shall be constructed in each mobile/manufactured home park which shall be adequate to provide for storage of all equipment, tools, and materials necessary for the maintenance of the park, and all such equipment, tools, material shall be stored within said building when they are not in use.
- H.) Each individual lot must have not less than two (2) off-street parking spaces. Such parking

spaces shall be connected to the entrance of the mobile/manufactured home by a paved sidewalk having a minimum width of thirty- six (36) inches.

- I.) No boats, campers, travel trailers, recreational vehicles, or unregistered and unlicensed motor vehicles shall be parked or stored at any place within a mobile/manufactured home park except in areas designated and approved for such storage as part of the site plan approval.
- J.) Every travel lane and parking lane within a mobile/manufactured home park shall have a minimum pavement width of twelve (12) feet and each roadway shall have a minimum right-of-way width of fifty (50) feet. If cul-de-sacs exist, they shall have a minimum diameter of eighty (80) feet.
- K.) A complete water distribution system approved by the Orleans County Health Department and other appropriate agencies, including a water-service pipe for each mobile/manufactured home lot and appropriately spaced fire hydrants shall be installed.
- L.) A public sanitary sewage disposal system approved by the Orleans County Health Department and other appropriate agencies shall be installed, including a sewer connection for each mobile/manufactured home lot.
- M.) All public utility, electric, gas, cable television and telephone lines shall be installed underground.
- N.) Appropriate street lighting shall be installed on interior roadways with the minimum number of lights being on at each intersection of interior roadways or with abutting public road, and at least every two hundred (200) feet where such intersections are more than two hundred (200) feet apart.
- O.) Pedestrian walkways shall be provided along at least one side of all interior streets and shall be five (5) feet in width.
- P.) A landscape plan shall be prepared and carried out which will assure the Planning Board that an appropriate planting of trees and shrubs will be included in the park design, including screening where necessary.
- Q.) No mobile/manufactured home shall be located on a mobile/manufactured home lot until the roadways, sanitary sewage disposal system, water supply system, storm drainage system, street lighting, landscaping, recreation areas, framed service buildings, and accessory vehicular storage buildings serving the mobile/manufactured home park have been installed in accordance with the approved site plan for the park.
- R.) Each roadway shall be named and noted upon signs at each roadway intersection. Each mobile/manufactured home lot shall be assigned a permanent number which shall be noted on the mobile/manufactured home lot in a location clearly visible from the roadway.
- S.) All fuel tanks used for heating within a mobile/manufactured home park, including all fuel tanks used for heating within individual homes, shall be installed underground in accordance with NFPA standards.
- T.) Every mobile/manufactured home park shall have a recreational area or open space area for use by the occupants of the park. Such areas shall be as centrally located as the topography and design of the park permit. Such areas shall be not less than one (1) acre for the first 20 mobile home lots, with an additional 1000 square feet provided for each additional mobile home lot established thereafter.
- U.) The park owner/operator shall provide for the regular collection and disposal of garbage, trash, and rubbish for all residents of the park
- V.) No more than one (1) accessory building shall be permitted on any individual mobile/manufactured home lot.
- W.) Each mobile/manufactured home shall be enclosed at the bottom with a fire resistant skirt or

enclosure within thirty days after the placement of the home on the lot.

- X.) No enclosure or addition, with the exception of carports, door porches, and patios, shall be constructed on, added to, or attached to the exterior of any mobile/manufactured home.
- Y.) No mobile/manufactured home shall be offered for sale, displayed for sale, or sold within a park unless such mobile/manufactured home is located on an individual mobile/manufactured home lot and is connected to electric, sewer and water services.
- Z.) Every roadway within a mobile/manufactured home park shall be maintained in good repair and shall be open at all times reasonably possible for travel by occupants of the park and necessary fire, police, ambulance, public utility maintenance and fuel supply vehicles. The park owner/operator shall be responsible for providing and paying the cost of such maintenance and for all necessary snow removal.
- AA.) Sale of Lots. Any sale of a mobile/manufactured home lot or lots, or a portion of a mobile/manufactured home park, other than the entire mobile/manufactured home park, as shown on the plan of such park approved by the town, shall thereupon immediately invalidate the special permit for such park approved by the Planning Board. Any use of any of the premises within the mobile/manufactured home park other than as a mobile/manufactured home park shall thereupon immediately invalidate the special permit of such park approved by the Planning Board.
- BB.) Home Occupations. Home occupations shall not be permitted in any individual mobile/manufactured home located within a park.

SECTION 714 MULTIPLE FAMILY DWELLINGS

- A.) The maximum gross density shall not exceed eight (8) units per acre.
- B.) Minimum Habitable Floor Area Requirements:
 - 1.) Townhouse units with two bedrooms or less: 850 square feet.
 - 2.) Townhouse units with three bedrooms or more: 1,000 square feet.
 - 3.) Efficiency Apartment unit: 550 square feet.
 - 4.) Apartment unit with one bedroom: 675 square feet.
 - 5.) Apartment unit with two bedrooms: 800 square feet.
 - 6.) Apartment unit with three bedrooms: 950 square feet.
 - 7.) No more than twenty (20) percent of the total units within a multiple family development shall be three (3) or more bedroom units.
- C.) Setback Requirements:
 - 1.) The minimum front setback from any public street shall be 90 feet.
 - 2.) The side and rear setbacks shall be 50 feet from all other lot lines.
 - 3.) Minimum distance between buildings in a multiple family dwelling development shall be 80 feet.
- D.) All stairways to the second floor or higher shall be located inside the building
- E.) Access to public road:
 - 1.) All multiple-family dwelling developments must have direct access to public roads.
 - 2.) If there are more than twelve (12) dwelling units in a multiple-family development, direct access must be provided to a public road by a private driveway or a road dedicated to the Town by the developer.
 - 3.) If there are more than fifty (50) dwelling units in a multiple-family development, or if in the opinion of the Planning Board the location or topography of the site indicate the need for additional access, the Planning Board may require such additional access as a condition

of site plan approval.

- F.) Off-street parking shall be provided in the amount of two (2) spaces for each unit.
- G.) The aggregate of lot coverage of multiple-family dwelling development shall not exceed thirty (30) percent of the total lot area.
- H.) Plans submitted for site plan approval shall include: sewage disposal, water supply, storm drainage, landscaping, and lighting.
- I.) The special permit term for this use shall be 3 years.

SECTION 715 MOTOR VEHICLE REPAIR SHOPS

- A.) Minimum Dimensional Requirements:
 - Minimum Lot Size: 25,000 square feet
 - Minimum Lot Width: 150 feet.
- B.) Entrance and exit driveways shall have an unrestricted width of not less than 25 feet and not more than 30 feet, and shall be located not nearer than 10 feet from any property line, and shall be designed as to avoid the necessity of any vehicle backing out into any public right-of-way.
- C.) No more than ten (10) licensed motor vehicles being serviced or repaired shall be stored or parked outdoors for more than 48 hours, and these shall be in areas effectively screened from all property lines. All such vehicles shall be stored in a neat, orderly manner.
- D.) No such establishment shall be located within a distance of 200 feet of a residence, cemetery, school, church, hospital, nursing home, senior citizen housing or other place of public assembly designed for occupancy by more than 50 persons or within 500 feet of another motor vehicle repair shop or gasoline station on the same side of the street. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- E.) A buffer strip shall be established, as determined by site plan review, along a side or rear property line facing any of the uses listed in D above.
- F.) The entire area of the site traveled by motor vehicles shall be hard surfaced.
- G.) All repairs of motor vehicles shall be performed in a fully enclosed building and no more than two (2) motor vehicles shall be offered for sale on the premises at any one time.
- H.) All motor vehicle parts or partially dismantled motor vehicle shall be stored inside an enclosed building.
- I.) The special permit term for this use shall be 2 years.

SECTION 716 PUBLIC AND SEMI-PUBLIC BUILDINGS AND GROUNDS

- A.) Minimum Dimensional Requirements:
 - Minimum Lot Size: 20,000 square feet
 - Minimum Lot Frontage: 100 feet.
 - If used for recreation purposes, as defined in this Ordinance:
 - Minimum Lot Size: One (1) acre
 - Minimum Lot Frontage: Two hundred (200) feet.
- B.) Landscaped areas at least ten (10) feet in width or other suitable screening shall be provided for the entire length of any lot line adjacent to any residence or adjacent street.
- C.) No structure of use shall be located within fifteen (15) feet of any adjacent property line.
- D.) Entrance and exit points shall be from major or secondary roads.
- E.) Parking areas shall not be within ten (10) feet of any property line.
- F.) The special permit term for this use shall be 3 years.

SECTION 717 RETAIL FUEL OUTLET

- A.) Minimum Dimensional Requirements:
 - Minimum Lot Size: 22,000 square feet
 - Minimum Lot Width: 100 feet
- B.) Entrance and exit driveways shall have an unrestrictive width of not less than 25 feet and not more than 30 feet, and shall be located not nearer than 15 feet from any property line, and shall be designed to avoid the necessity of any vehicle backing out into any public right-of-way.
- C.) Entrance and exit point shall be from a major or secondary road.
- D.) All buildings shall be set back from the major or secondary street line a distance of not less than 30 feet.
- E.) Fuel pumps shall be located not less than 50 feet from the street line and not less than 30 feet from all other property lines.
- F.) No such establishment shall be located within a distance of 200 feet of a school, church, hospital, nursing home, senior citizen housing or other place of public assembly designed for occupancy by more than 50 persons, or within 500 feet of another fuel station or repair garage on the same side of a street. Said distance shall be measured in a straight line between the nearest points of each of the lots or premises.
- G.) Landscaped areas of at least ten (10) feet in width shall be provided along property lines to lessen any visual unattractiveness.
- H.) The entire area of the site traveled by motor vehicles shall be hard surfaced.
- I.) Any repair of motor vehicles shall be performed in a fully enclosed building and no more than two (2) motor vehicles shall be offered for sale on site at any one time. No motor vehicles parts, or partially dismantled motor vehicle shall be stored outside of an enclosed building.
- J.) The special permit term for this use shall be 2 years.

SECTION 718 CHARTER BOAT SERVICE

- A.) Charter fleet shall not exceed two (2) boats.
- B.) Adequate parking for the proposed operations shall be made in accordance with the terms and conditions of this Ordinance.
- C.) All other legal requirements for the operation of charter boat service shall be maintained.
- D.) The special permit term for this use shall be 5 years.

SECTION 720 ACCESSORY BUILDING USED FOR ANIMAL HOUSING

- A.) Stock animals are permitted in those districts specified in Article V of this Ordinance, and shall require a minimum of one acre of yard for each animal unit kept. Animal units are defined as follows: One horse or one cow per animal unit; Two goats or two pigs per animal unit; fifty rabbits or fifty fowl per animal unit.
 - Other provisions include:
 - 1.) Animals must be confined within the yard area.
 - 2.) Animals must be adequately sheltered in a structure placed no closer than fifty feet to any lot line.
 - 3.) No objectionable odors, noise, unsightliness or contamination to water sources shall be encountered by adjoining properties.
- B.) The special permit term for this use shall be 5 years.

SECTION 721 FISH CLEANING STATION

- A.) In order to obtain a special permit the following conditions will be required:
- 1.) Liquid waste (fish wash down) disposal must be done by means of a permanent or temporary holding tank system. Introduction of fish wastes into a conventional septic tank system is prohibited as the high degree of organic solids would overload the system and cause premature failure of the system. All holding tanks must be equipped with a buzzer/alarm which indicates when the tank is 2/3 full or stick measurements made daily to determine remaining capacity. All tanks must be pumped out by a registered septic tank hauler, receipts kept on file, and a log of pump-out dates submitted annually to the Town Clerk and made available upon request for inspection to verify pump-out frequency.
 - 2.) Gurry waste (a mixture of fish wash down and ground-up fish solids) disposal must also be done by means of a holding tank system. Disposal of gurry waste shall only be performed by a registered septic tank hauler with the appropriate permits to transport and dispose of the waste either at a community sewage treatment plant or by land spreading.
 - 3.) Solid wastes (fish guts and carcass) disposal must be a part of the fish cleaning station. It is neither desirable nor practical to expect fisherman to search out an approved disposal site for the disposal of solid fish wastes. Garbage cans with tight-fitting covers are acceptable if proof is submitted that the pickup of the wastes will be frequent enough to prevent odor problems. Commercial deodorizers shall be required if the frequency of disposal is not sufficient to eliminate odor problems. Dumpsters are permitted to be used if proof is submitted that they are to be emptied a minimum of 2 times per week. Commercial deodorizers shall be used in all dumpsters regardless of the frequency of disposal.
 - 4.) Solids handling, disposal, and storage shall be located in an area as far removed from residential developments as possible, with the minimum distance from any property line being 50 feet.
- B.) The special permit term for this use shall be 3 years.

SECTION 722 BED AND BREAKFAST

- A.) A maximum total of eight (8) guests shall be allowed to occupy a bed and breakfast establishment on an overnight basis.
- B.) A maximum of two (2) adult guests and accompanying minor children shall be allowed to occupy each rentable unit in a bed and breakfast establishment.
- C.) The principal dwelling shall be owner-occupied.
- D.) The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations.
- E.) The use of out buildings detached from the principal dwelling shall not be used for the purpose of a bed and breakfast establishment.
- F.) A minimum of one (1) off-street parking space shall be provided for each rentable unit. No such parking space shall be located in the front yard area and each space shall not be less than ten by twenty (10x20) feet.
- G.) The dwelling may display a sign not to exceed two by two (2x2) feet in size.
- H.) No bed and breakfast establishment shall be permitted where access is provided by a shared driveway.
- I.) No bed and breakfast establishment shall be permitted in an individual mobile home or mobile

home park.

- J.) Each rentable unit in a bed and breakfast establishment shall maintain a working smoke detector.
- K.) Such uses shall comply in full with the Orleans County Sanitary Code and the New York State Uniform Fire Prevention and Building Code.
- L.) The special permit term for this use shall be 3 years.

SECTION 723 AUTOMOBILE SALES/RENTAL

- A.) Minimum Dimensional Requirements:
 - Front Setback: 75 Feet
 - Side Setback: 30 Feet
 - Rear Setback: 30 Feet
 - Lot Frontage: 200 Feet:
 - Lot Size: 1Acre
- B.) Entrance and Exit driveways shall have a minimum width of 25 feet and shall be not less than 20 feet from any side property line.
- C.) Not more than 25 automobiles shall be offered for sale or rent on any lot at any one time, and all automobiles shall be displayed in a neat and orderly manner.
- D.) All automobiles shall be in proper working order at all times and shall bear a New York State Department of Motor Vehicle Registration.
- E.) The entire surface of the site to be traveled by motor vehicles shall be hard surfaced.
- F.) No vehicles shall be displayed for sale or rent within 25 feet of any property line.
- G.) No retail sale of fuels shall occur on the site at any time.
- H.) All signage must comply with Section 600 and 601 of this Ordinance.
- I.) No exterior light source shall be erected in excess of 50 feet above the ground surface and all lighting shall be placed to eliminate the casting of direct light or glare upon adjacent properties.
- J.) Repair of Motor Vehicles on site is prohibited unless the provisions found in Section 715 of this Ordinance are complied with in full.
- K.) The special permit term for this use shall be 3 years.

SECTION 724 METEOROLOGICAL TEST TOWERS (Met Towers)

The Town of Kendall (TOK) will authorize the maximum of four (4) Meteorological Test Towers (Met Tower) Special Use Permits for this purpose.

A.) PURPOSE:

This supplemental regulation is to protect the interests of residents within the TOK by zoning laws controlling the location, Open Space Policy of the TOK Master Plan, engineering standards, restoration of permitted sites, roads and environment consistent with State of New York and Federal Statutes. Furthermore these regulations are intended to protect health, safety, general welfare and visual aspects presented by the erection of Met Towers. Met Towers are to be used only for the collection of anemometer information necessary within the development of CW ECS design and location thereof. Met Towers shall be only permitted within the Residential/Agricultural Zones (R/A) (Map 1 of 2, Town of Kendall, 8-5-1996 as amended).

B.) GENERAL REQUIREMENTS:

A Special Use Permit is required as defined in Article IX of the TOK Zoning Ordinance. A Special

Use Permit may be granted for a period of two (2) years. Once permit is granted, should non-performance by the applicant for a period of twelve (12) months occur, a revocation will be made by the TOK Code Enforcement Officer (CEO) and reapplication will become necessary to proceed. Should applicant demonstrate necessity supporting extension of this permit and proper written presentation to CEO, reviewed by the TOK Planning Board, an additional year may be granted.

1.) PROCEDURE:

All applicants shall request in writing an informal consultation with the TOK CEO and Planning Board to assess, verify and direct applicant of Special Use Permit procedures.

2.) APPLICATION:

Shall comply with the TOK Zoning Ordinance or as amended by these regulations.

- a.) Shall provide proof of sufficient liability insurance and other insurances necessary to indemnify and hold harmless all government authorities of any claims resulting from this permit process.
- b.) Shall be submitted to the TOK CEO and Planning Board with completed State Environmental Quality Review (SEQR), full type 1 action, Environmental Assessment Form (EAF), Visual Environmental Assessment Form (VEAF) detailing visual and esthetic analysis impacting all residents of the TOK, Cemeteries and Historical sites.
- c.) Shall include *Statement of Necessity* indicating Met Towers are essential for the anemometer collection of data and only to be used within design of CWECS and construction thereof. Furthermore, agreement to completely share with the TOK Town Board summary information harvested from each test tower, which would support or reject site for development of wind energy systems.
- d.) Shall be requested for each Met Tower individually and will be processed by the TOK Authorities by date, accuracy and completeness of requested information, to include cost of legal, engineering, insurances, bonds, permits and fees as set forth by the TOK Town Board. Refer to Article IX, Section 902, Procedure of TOK Zoning Ordinance.
- e.) Shall provide name, address and phone number of the applicant. If request is by corporation proof shall be required that it is currently legally registered within the State of New York.
- f.) Shall provide notarized proof of permission, name, address and phone number of the property owner of record, Copy of Deed, lien holders (if mortgaged), tax map, lot and block numbers of each proposed site. Five copies of New York State Licensed Civil Engineer or Surveyor prepared site plan displaying location of proposed Met Tower with topographic description displayed; also current photos of the site and directional photos facing neighboring properties. Recent aerial photos may be offered in lieu of directional photos.
- g.) Shall include list of all adjoining property owners and property owners within twenty six hundred feet (2600ft.) of proposed Met Tower base. Property owners listed shall be sent, at the expense of the applicant by certified mail, letters advising each of impending action. These property owners must also be advised of this or future regulations that may affect their property values, rights and esthetics.

C.) GENERAL MET TOWER DESIGN STANDARDS:

Shall closely reflect industry standards for safety, site, visual, material, security, environmental protection, decommissioning and restoration of the site. Met Towers shall not be installed within five hundred feet (500') from any roadway, building, or utility line, adjacent property line (other than land of owner), LWRP, Rural Residential (RR), General Business (B), Residential/Hamlet (RH) or School Zone.

- 1.) Met Tower design shall include guyed monopole or lattice-work Tower(s), antenna(s), anemometer, supporting masts, wires, guying system anchorage, structures, foundations and non-permanent accessory buildings, if needed. Towers shall have a maximum height of one hundred and ninety-nine feet (199'). All designs/drawings shall be prepared and raised stamped by an insured registered New York State Professional Engineer. Within this drawing package a description of a Fall Zone exceeding 150% of the tower height is also required.
- 2.) Exterior surfaces of Met Towers and appurtenant structures shall be coated or finished in a color scheme to blend with surrounding environment. Acceptable color presentation to TOK Planning Board is required.
- 3.) Security fencing six feet in height (6') extended with arms securing three barbed wire strands around each tower and guying anchorages to discourage unauthorized entry. The applicant is responsible to prevent vandalism and unauthorized access to site, property damage, potential injury and possible legal claims against the TOK.
- 4.) Before use, Met Towers will be inspected by an independent structural testing authority, results certified by New York State Registered Engineer to affirm structural compliance, and submitted to the TOK Town Board for review. The TOK Town Board and Planning Board, at the expense of the applicant, may employ legal and consulting assistance to verify any conclusions presented. Among items to be reviewed include structural safety, visual standards, esthetics, communication interference, restoration of site at conclusion of permit period and all other pertinence to this permit.
- 5.) One (1) sign, displaying the name, address, phone number of responsible contact person is required at each Met Tower site. Refer to Zoning ARTICLE VI, SECTION 600 & 601 for remainder of sign regulation. No other display or advertisement is permitted.
- 6.) If access roads are constructed, they are to be maintained and secured against unauthorized entry. All roadways are to be removed after permit period and restored to pre-construction condition. No vehicles will be permitted overnight parking after erection period; during operation, parking is limited to three vehicles. Public roads will be kept clean. Damage to public roadways must be immediately reported to the TOK Highway Superintendent for his advice and repaired meeting TOK, Orleans County and State of New York Specifications.
- 7.) Compliance with all FAA regulations will be strictly enforced, such as lighting and marking. Proof of non-interference with established Microwave or Communication Towers is required. Local aircraft owners/flyers and aerial crop maintenance companies must be notified of sites and potential navigational hazards created.

D.) DECOMMISSIONING, REMOVAL AND RESTORATION:

Shall commence within two weeks (2 weeks) of Special Use Permit expiration date. Formal application for extension may be presented to TOK CEO and Planning Board supporting reasons to extend. Unless extended Special Use Permit is granted, all towers, buildings, foundations, anchorages, security fencing, materials and trappings shall be promptly removed from site. The entire site, access roads, parking areas, disturbed trees, soils and grasses returned to original condition. Before a Special Use Permit is granted the applicant must provide financial security to the TOK Town Board in the amount of Fifty Thousand Dollars (\$50,000) for each permitted site to insure removal(s) and restoration thereof. After final compliance to these regulations and approval by TOK CEO said bond/cash security would be released. The TOK, Town Board reserves the option to adjust financial security bond/cash to adequately reimburse the TOK for actual costs incurred by non-performance or adherence to these regulations.

SECTION 725 WIND ENERGY OVERLAY DISTRICT (Amended 08.28.08)

A.) CREATION:

The Town Board of the Town of Kendall hereby adopts the rules and procedures for creating Wind Energy Overlay Districts to allow consideration of use of the Town's wind energy resource through Commercial Wind Energy Conversion Systems (CWECS) and to regulate or prohibit the placement of such systems so that the public health, safety, and welfare will not be jeopardized.

B.) AUTHORITY

The Town Board of the Town of Kendall adopts this Section under the authority granted by:

- 1.) Article IX of the New York State Constitution, § 2 (c) (6) and (10).
- 2.) New York Statute of Local Governments, § 10 (1), (6), and (7).
- 3.) New York Municipal Home Rule Law, § 10 (1)(i) and (ii) and § 10 (1)(a)(6), (11),(12), and (14)
- 4.) The supersession authority of New York Municipal Home Rule Law, § 10 (2)(d)(3).
- 5.) New York Town Law, Article 16 (Land Use).
- 6.) New York Town Law § 130(1) (Building Code), (3) (Electrical Code), (5) (Fire Prevention), (7) (Use of streets and highways), (7-a) (Location of driveways), (11) (Peace, good order and safety), (15) (Promotion of Public welfare), (15-a) (Excavated Lands), (16) (Unsafe buildings), (19) (Trespass), and (25) (Building lines).
- 7.) New York Town Law § 64(17-a) (protection of aesthetic interests) and (23) (General powers).

C.) WIND ENERGY OVERLAY DISTRICT RULES

- 1.) Under New York State statutes the Town is not required to act on rezoning requests to create Wind Energy Overlay Districts. The rezoning of districts is completely at the discretion of the Town Board.
- 2.) Wind Energy Overlay Districts are permitted only in Residential Agricultural (RA) and Rural Residential (RR) Districts.
- 3.) No Wind Energy Overlay District may be initially created without specific requests for a CWECS.
- 4.) Once a Wind Energy Overlay District has been created, new Wind Energy Conversion Systems, accessory structures, or facilities may be added in that district by the granting of a Special Use Permit.

D.) CREATION OF WIND ENERGY OVERLAY DISTRICTS

- 1.) Upon receipt of an application, the recommendations of the County Planning Board, the recommendations of the Town Planning Board, the holding of public hearings and the completion of the SEQRA process, the Town Board may approve, approve with conditions, or deny the application, in accordance with the standards of this Section.
- 2.) If approved, the Town Board will direct the Planning Board to modify the Official Zoning Map to reflect the creation of the wind energy overlay district.

SECTION 726 WIND ENERGY CONVERSION SYSTEMS (Amended 08.28.08)

A.) PURPOSE

To permit and regulate the location, erection, operation and transmission lines of wind energy systems, thereby protecting the interests of Town of Kendall residents. Wind Energy Conversion Systems shall be classified as Residential, Agricultural and Commercial Systems, permitted by the Town of Kendall and regulated by the enactment of this ordinance.

B.) AUTHORITY

The Planning Board, as an advisory panel, is charged by the Town Board of the Town of Kendall to prepare ordinances as requested by the Town Board, returning the prepared land use ordinance to the Town Board for its disposition.

C.) FINDINGS

The Planning Board of the Town of Kendall finds that:

- 1.) Wind energy is an abundant, renewable, and nonpolluting energy resource of the Town of Kendall and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
- 2.) The generation of electricity from properly sited wind turbines has the potential to tie into existing power distribution systems, allowing for the transmission of electricity from wind generation stations to utilities or other users, or alternatively may be used to reduce or eliminate on-site consumption of energy.
- 3.) Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners, the environment, and the general public. Wind Energy Conversion Systems need to be consistent with Article I of the Town of Kendall Zoning Ordinance and continue the Open Space Policy of the Town of Kendall Master Plan.
- 4.) Wind Energy Conversion Systems represent significant potential aesthetic impacts because of their large size, lighting and shadow flicker effects. The installation of Commercial Wind Energy Conversion Systems will change the landscape and appearance of the Town of Kendall.
- 5.) If not properly regulated, installation of Wind Energy Conversion Systems can create drainage problems through erosion and lack of sediment control for the facility and access roads and harm farmlands through improper construction methods.
- 6.) Wind Energy Conversion Systems may present risks to avian (bird) populations.
- 7.) If not properly sited, Wind Energy Conversion Systems may present risks to the property values of adjoining property owners.
- 8.) Without proper planning, construction of Wind Energy Conversion Systems can create traffic problems and damage local roads.
- 9.) If improperly Sited, Wind Conversion Energy Systems can interfere with various types of communications.

SECTION 727 COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (Amended 08.28.08)

A.) GENERAL

- 1.) No Commercial Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Kendall except in compliance with this section.
- 2.) No Commercial Wind Energy Conversion System shall be constructed, reconstructed, modified, or operated in the Town of Kendall, except in a Wind Energy Overlay District.
- 3.) The placement, construction, and major modification of all Commercial Wind Energy Conversion Systems (CWECS) within the boundaries of the Town of Kendall shall be permitted only by Special Use Permit.
- 4.) Commercial Wind Energy Conversion Systems are permitted only in the Residential Agricultural (RA) and Rural Residential (RR) Districts.
- 5.) The applicant shall pay all costs associated with the Town of Kendall's review and processing of each application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing all applications. This agreement will include the cost of the review required by SEQRA, creation of an overlay district, or modification to the Town of Kendall Master Plan.

- 6.) Prior to the creation of a Wind Energy Overlay District, the Town Board has the ability to negotiate a payment in lieu of taxes and/or host community agreement with any applicant to compensate the Town for expenses or impacts on the community.
- 7.) The Town of Kendall reserves the right to opt out of the provision of the New York State Real Property Tax Law (RPTL) Section §487 under the authority within its jurisdiction granted by Paragraph 8 of that law.
- 8.) Prior to the issuance of a building permit, the applicant shall provide the Town of Kendall with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with the construction and operation thereof.
- 9.) The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an interconnection agreement with the New York System Operator and/or the applicable transmission owner.
- 10.) The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation or during periods of maintenance of a Wind Energy Conversion System. A public improvement bond shall be posted prior to the issuance of any building permit in an amount determined by the Town Board, sufficient to compensate the Town of Kendall for any damage to local roads and infrastructure.
- 11.) The Town of Kendall shall be named as an additional insured under the general liability policy of the applicant, with an amount no less than an amount to be determined by the Town Board given the nature and scope of the project.

B.) APPLICATION

- 1.) Applicants shall request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer, and with any consultants retained by the Planning Board for preliminary application review.
- 2.) Upon submittal of an application, the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
- 3.) An Application for a Commercial Wind Energy Conversion System (CWECS) shall include the following:
 - a.) Name, address, and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation. The application shall include a certified list of individual and corporate officers of the applicant and their responsibilities to this project.
 - b.) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
 - 1.) The property owner is familiar with the proposed application.
 - 2.) The property owner authorizes the submission of the application.
 - c.) Proof of ownership of involved properties or long-term leases, legally executed and filed with the Orleans County Clerk.
 - d.) Address or other property identification of each proposed tower location, including Tax Map section, block and lot number with Global Positioning Satellite (GPS) location of each proposed wind tower and related structure.

- e.) A plot plan with a minimum scale of one (1) inch = four hundred (400) feet prepared by a Professional Engineer licensed in the state of New York, stamped and dated to include:
 - 1.) Six Copies of the Drawing Package.
 - 2.) North arrow and bar scale.
 - 3.) Property Lines and physical dimensions of the site provided by a surveyor licensed in the State of New York.
 - 4.) Topography by one foot (1 ft.) contours.
 - 5.) The applicant shall include an existing Site Plan and proposed Site Plan to include all roadways, fields, ponds, lakes, water courses, wetlands, residences, buildings, structures, historical sites, cemeteries, bridges or culverts, water wells, sewage systems, crop land and wood land by lot, block and tax identification number.
 - 6.) Location of public roads, adjoining properties, schools, hospitals, and public buildings within two-thousand five hundred (2500) feet of the boundaries of the proposed CWECS Site.
 - 7.) Each WECS clearly referenced including location and elevation.
 - 8.) To demonstrate compliance with fall zone and set back requirements, circles are to be drawn around each proposed tower location equal to:
 - a.) One and a half (150%) times the tower height as measured from the apex of the rotor blade to the base of the tower.
 - b.) Circles with a one-thousand five hundred (1500) foot and two-thousand five hundred (2500) radiuses.
- f.) A Construction Plan sequential by site designation, estimated dates and duration of construction displaying access/egress roads for delivery of construction equipment, staging areas, parking areas for receiving and off loading of materials and structural components. No parking on public roads or streets shall be permitted.
- g.) A pre-construction survey to be preformed by an independent third party, of roads, culverts and bridges shall be supplied to the Planning Board and Town of Kendall Highway Superintendent for review, verification, sign-off and record retention. The survey shall include photo and/or video documentation.
- h.) Vertical drawing of the CWECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any rotor blade, location of climbing pegs, and access doors. One drawing may be submitted for each CWECS of the same type and total height.
- i.) A description of the total amount of land impacted by the construction and operation of a Wind Energy Facility. The description will include the impacts of land clearing, the loss of open spaces and the amount of agricultural land used during all phases of the project.
- j.) Landscaping Plan depicting existing vegetation and describing any areas to be cleared and all specimens to be added, identified by species and species size at installation with their location.
- k.) Lighting Plan:

The applicant shall submit a lighting plan that describes all lighting that will be required. Such plan shall include, but is not limited to, the planned number and location of lights, lighting that may be required by the FAA including, a copy of the FAA lighting determination, types of light, whether any such lights will be flashing, and mitigation measures planned to control the light so not to spill over onto neighboring properties.
- l.) Adjacent Property Owners:

A list of all adjacent property owners of land within two-thousand five hundred (2500) feet as measured from the tower base to non-participating property lines shall be provided to the

Planning Board for review and record retention. The list shall contain the names, property addresses, mailing address and tax map numbers of the property owners.

m.) Decommissioning Plan:

The applicant shall submit a decommissioning plan which shall include:

- 1.) The anticipated life of the CWECS.
- 2.) The estimated decommissioning cost in current dollars.
- 3.) How said estimate was determined including the amount the cost is offset with salvage value.
- 4.) The method of ensuring that the funds will be available for decommissioning and restoration.
- 5.) The method, such as annual re-estimate by an independent licensed engineer or qualified estimator approved by the Town, by which the decommissioning cost will be kept current.
- 6.) The manner in which the CWECS will be decommissioned and the site restored and shall include the following:
 - a.) Removal of wind turbines and associated ancillary equipment.
 - b.) Removal of substations and associated ancillary equipment.
- 7.) Removal of the concrete base of the wind turbine to a depth of not less than five (5) feet and restoration of affected land to pre-construction grade.
- 8.) Removal of buried cables if less than five (5) feet in depth.
- 9.) A pre-decommissioning survey, to be performed by an independent third party, of roads, culverts and bridges and affected land. The survey shall include photo and/or video documentation.
- 10.) Removal of access roads and restoration of affected land.
- 11.) Widening of roadways, if necessary for heavy equipment and final restoration of all roadways used during removal.
- 12.) Restoration of vegetation (consistent and compatible with surrounding vegetation) less any fencing or minor improvements requested by the landowner.

n.) The application shall include information relating to the construction, installation and repair of the Wind Energy Facility as follows:

- 1.) Construction schedule describing anticipated commencement and completion dates.
- 2.) Hours of operation.
- 3.) Designation of heavy haul routes.
- 4.) A list of materials, equipment and loads to be transported.
- 5.) Identification of temporary facilities intended to be constructed, and representatives in the field with name and phone number(s).
- 6.) Specific turbine information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine model, tower, and electrical transmission equipment.
- 7.) Method of delivery, both short and long term storage, and the method of removal from the Site of large components for repairs which may become necessary in the normal course of operation of the WECS over its operational life.
- 8.) The amount of farm land removed from use during the construction period and after completion of the Wind Energy Conversion Facility.

o.) SEQRA Review:

- 1.) Applications for CWECS are deemed Type 1 projects under SEQRA. The town may conduct its SEQRA Review in conjunction with other agencies, in which case the records of review by said communities shall be part of the record of the Town of Kendall's

proceedings. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).

- 2.) At the completion of the SEQRA Review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town of Kendall shall issue a Statement of Findings. The Statement of Findings may also serve as the Town's decision on the application.

p.) Agricultural Data Statement:

Applications for a facility that are proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:

- 1.) The name and mailing address of the applicant.
- 2.) A description of the proposed project and its specific location.
- 3.) Identification of the agricultural district in which the site is located.
- 4.) A brief description of the farm operations and how they will be affected by the proposed wind system.
- 5.) The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
- 6.) A tax map or other map showing the project site and the location of the farm operations involved.

q.) Wind Energy Studies:

All studies, where applicable, shall comply with NYSDEC Visual and Noise Assessment and Mitigation Guidelines. The following studies shall be submitted with the application:

1.) Meteorological Data:

The applicant shall show evidence that a wind assessment has been conducted.

Meteorological data such as air temperature, wind speed and wind direction shall be collected through a Meteorological Tower (MET Tower) sited within the Town of Kendall on or in close approximation to the proposed Site. Test data cannot be interpolated from areas outside the town of Kendall.

2.) Shadow Flicker:

The applicant shall conduct a study on potential shadow flicker. The study shall identify areas where shadow flicker may interfere with residences, churches, schools and all public areas and buildings and describe measures that shall be taken to eliminate or mitigate the problems.

3.) Visual Impact:

Applications shall include a visual impact study of the proposed CWECS as installed, which may include computerized photographic simulations. The study shall demonstrate any visual impacts from each strategic vantage point from residences, schools, churches, historic site and all public buildings and gathering places. Mapping at a minimum shall include visibility based on topography-only and vegetation analysis with locations of residences, schools, churches, historic site and all public buildings and gathering places.

4.) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties neighboring CWECS Sites.

5.) Fire Protection:

The application shall include a fire protection and emergency response plan, created in consultation with the fire departments having jurisdiction over the proposed sites. The plan may include but is not limited to the following:

- a.) Fireproof or fire resistant building materials.
 - b.) Buffers or fire retardant landscaping.
 - c.) Availability of water.
 - d.) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment operated without regular human occupancy.
 - e.) Identification of tower locations and inclusion into the county 911 emergency system.
 - f.) Provision of training and fire fighting equipment for local fire protection personnel.
- 6.) Noise Analysis:
A noise analysis completed by a certified New York State acoustical engineer documenting the noise levels associated with the proposed CWECS. The study shall include the following:
- a.) A survey and report that analyzes the pre-existing ambient noise regime (including seasonal variations), including but not limited to separate day and night measurements of low frequency and A-weighted noise levels across a range of wind speeds (include near cut-in), turbulence measurements, distance from the turbines, with location of residences, buildings and facilities located within two miles of the proposed project site.
 - b.) A description and map of the project's noise producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
 - c.) A description and map of the noise sensitive environment, including the site property lines, residences, schools, places of worship and other facilities where quiet is important within two miles of the proposed site.
 - d.) Manufacturers' noise design and field test data, both audible dB(A) and low frequency, for all proposed structures.
- 7.) A geological report shall be furnished which shall, at a minimum, include the following:
- a.) Soils engineering and geological characteristics of the site based on on-site sampling and testing. Copies of soil boring logs are to be included in the report to the Town.
 - b.) Foundation design criteria for all proposed structures including the need for any blasting.
 - c.) Slope stability analysis.
 - d.) Grading criteria for ground preparation, cuts and fills, and soil compaction.
 - e.) Impact on existing water aquifers including a study and impact on existing wells.
 - f.) Submission of a storm water pollution prevention plan (SWPPP).
 - g.) Post construction monitoring plans for NYS Dept. of AG & Markets guidelines, NYSDEC Draft Bird/Bat guidelines, regular structural/operational inspections conducted by an independent licensed engineer(s), and operational noise monitoring.
- 8.) Ice throw calculations:
A report from a New York State Professional Engineer that calculates the maximum distance that ice from the turbine blades could be thrown for the make and model wind turbine proposed for the site. The basis of the calculation and all assumptions must be disclosed.
- 9.) Blade throw calculations:
A report from a New York State Professional Engineer that calculates the maximum distance, in the event of a failure, that pieces from the turbine blades could be thrown for

the make and model wind turbine proposed for the site. The basis of the calculation and all assumptions must be disclosed.

10.) Catastrophic tower failure:

A report from the turbine manufacturer stating the wind speed and conditions with all assumptions that the turbine is designed to withstand.

11.) The applicant will include a complaint resolution process for both the construction and operational phase to address complaints from nearby residences. The process may use an independent mediator or arbitrator and include a time limit for acting on a complaint.

12.) Other Information:

Such additional information as may be reasonably requested by the Town or the Town Engineer.

C.) STANDARDS FOR CWECS

1.) Construction and Traffic Routes:

- a.) Construction of a CWECS poses potential risks because of the large size of construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such routes shall include:
- 1.) Minimize traffic impacts from construction and delivery vehicles.
 - 2.) Minimize WECS related traffic during times of school bus activity.
 - 3.) Minimize wear and tear on local roads.
 - 4.) Minimize impacts on local business operations.
- b.) Permit conditions may require remediation during construction, limit WECS related traffic to specified routes, and include a plan for disseminating traffic route information to the public and all applicable state, county and municipal highway authorities and superintendents whose roads are included in the WECS traffic route plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.
- c.) The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation, periods of maintenance, and decommissioning/restoration of a Wind Energy Facility.
- d.) Storm-water run-off and erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
- e.) Geological soil testing shall be done at each proposed tower foundation. Should testing suggest any interference with existing water aquifers the site will be disqualified.
- f.) Access roads required for construction shall be adequate to support weight of trucks, erection cranes, facility sections and heavy construction equipment. Temporary roads are to be returned to pre-construction condition leaving only private driveways used for routine maintenance by facility and utility crews. Overnight parking of vehicles will be permitted only during established construction period or during periods requiring additional personnel or equipment for maintenance and repair of a wind energy system. Parking is prohibited on public roads at all times.
- g.) Excavation shall be as required for foundation only, over-excavation shall be repaired as per NYS Building Codes. Excess-quarried materials shall not be used to raise existing grade at the tower base. These materials may be used elsewhere on the proposed site by permission of the owner and Town of Kendall Code Enforcement Officer. Excess materials may not be taken from the Town of Kendall; however, agreement may be pursued by the Town Board for use by

the Town of Kendall Highway Department. (Refer to SECTIONS 660 and 707 Town of Kendall Zoning Ordinance.)

- h.) All underground work shall be clearly marked “As Built”, documented during construction, plotted upon completed project drawings, and filed with the Town of Kendall with “Dig Safely New York (1-800-962-7962)” or its successor.
- i.) Utility Right of Ways shall not be renegotiated to take over more ground nor increase limits by removal of trees. Redesign of utility poles must consider impact of access for large farming machinery.
- j.) The Town of Kendall will employ an independent engineering inspection service to monitor all construction/erection activities. The facility developer shall assume all costs of this service.
- k.) All solid waste, hazardous waste and construction debris shall be removed from the Site and managed in a manner consistent with all appropriate rules and regulations as set forth by the appropriate agencies.
- l.) Any construction, ground disturbance or restoration involving agricultural land or land located in agricultural districts shall be done according to the New York State Department of Agriculture and Markets’ publication titled “Guidelines for Agricultural Mitigation for Wind Power Projects.”

2.) Certification

The facility developer shall employ an independent and Town of Kendall approved engineering service to certify to the Town that the facility is built as designed and is qualified for service before final permit is issued by the Code Enforcement Officer. The applicant shall provide the following certifications:

- a.) All structural components, including the foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by an independent New York State licensed Professional Structural Engineer. The engineer shall certify compliance with all applicable local, state, and federal codes and regulations.
- b.) After completion of the Wind Energy Conversion System, the applicant shall provide a post-construction certification from an independent New York State licensed Professional Engineer stating that the project complies with applicable codes and industry practices and has been completed according to the design plans.
- c.) The electrical system shall be certified annually in writing by an independent a New York State licensed Professional Electrical Engineer. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of IEEE standards and any other explicit technical standards required in New York State.
- d.) The rotor overspeed control system shall be certified in writing by an independent New York State licensed Professional Engineer. The engineer shall certify compliance with applicable design and operational codes.
- e.) Certification of project completion must be supplied by the applicant and approved by the Town of Kendall Code Enforcement Officer.

3.) Color, Finish and Visual Impact

- a.) All applicants shall use measures to reduce the visual impact of WECSs to the greatest extent possible. All structures shall be finished in a single, non-reflective matt finish color or a camouflage scheme and shall include a maintenance schedule and plan to maintain the finished color and appearance of the WECS.
- b.) Individual WECSs within a Wind Energy Overlay District shall be constructed using wind turbines whose design and appearance shall exhibit uniformity to each other in all respects: height, color, size, geometry, and rotational speed.

- c.) No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
 - d.) No television, radio, or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications provisions of the Town of Kendall Zoning Code.
- 4.) Compliance with Regulatory Agencies:
The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.
- 5.) Electrical
- a.) All interconnecting lines and wires from generators to ground ancillary structures and utility transmission grid will be installed underground to the maximum extent practicable. The Planning Board shall have the authority to waive this requirement only if the Planning Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
 - b.) Underground high voltage lines shall have five-foot (5') cover to existing grade, per NEC burial guidelines. Burial depth may be reduced in areas of bedrock with less than five feet in depth per NYSDAM, NEC permits and New York State Department of Agriculture and Markets guidelines.
 - c.) All precautions shall be applied to prevent stray voltage leakage; should such occur, immediate remedial correction must be taken. A report of complaint and remediation must be given to the Town of Kendall Code Enforcement Officer for immediate analysis and remedial action.
- 6.) Electromagnetic Interference
- a.) No Commercial Wind Energy System shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception.
 - b.) No CWECs shall be installed in any location along the major axis of an existing microwave communication link where its operation is likely to produce electromagnetic interference in the link's operation.
 - c.) If it is determined that a CWECs is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties.
 - d.) Failure to remedy electromagnetic interference is grounds for revocation of the Special Use Permit for the specific WECS or WECSs causing the interference.
- 7.) Fire Prevention
- a.) Shall have automatic fire suppression system within the nacelle.
 - b.) All Wind Energy Facilities shall be designed and constructed in compliance with the applicable requirements of the New York State Uniform Fire Prevention Code, as currently in effect and as hereafter amended.
- 8.) Height Restrictions
- a.) The total height of any Commercial Wind Energy Conversion System shall be four hundred (400) feet. The total height shall be measured from the ground elevation from the pre-construction or post construction grade whichever is lower to the top of the tip of the blade at the apex of rotation.
 - b.) The blade tip of any wind turbine shall, at its lowest point, have a ground clearance of not less than fifty (50) feet.
- 9.) Landscaping

Upon completion of the installation, the Site shall be returned as close as possible to its natural state, including, but not limited to, restoring the subsoil and topsoil to preconstruction condition and reforestation of any woodland that have been cleared for Site preparation. Vegetation shall be planted in a natural pattern on the Site to screen as much of the facility as possible without restricting air flow. Existing vegetation may be used to supplement new plantings.

10.) Lighting

Towers and turbines shall not be artificially lighted or marked beyond the requirements of the Federal Aviation Administration (FAA). Minimum security or safety lighting may be allowed as approved on the Site Plan. Any lighting systems shall be designed to minimize light pollution and shall include the use of light hoods, low glare fixtures or directing lights at the ground. Lighting shall not shine onto adjacent properties.

11.) Local Waterfront Revitalization Program

The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).

12.) Maintenance and Replacement

a.) A permitted facility may be maintained and repaired at any time, which becomes necessary in the normal course of operation of the Wind Energy Facility, without a Special Permit or Building Permit, provided the maintenance does not involve the following:

- 1.) An increase in the number of towers.
- 2.) An increase in the number of wind turbines.
- 3.) An increase in the tower height.
- 4.) A change in the tower location.
- 5.) A change in the type of wind turbine, nacelle or tower used.
- 6.) A change in the number or size of accessory structures.
- 7.) A change that increases the sound pressure level or shadow flicker produced by the facility.
- 8.) The transportation of heavy equipment, cranes and large spare parts that are oversize loads and require public road use, the widening of access roads, or pose potential damage to the infrastructure of the Town of Kendall, or surrounding communities.

b.) Replacement in kind of a Wind Energy Facility may occur with Town Board approval when:

- 1.) There will be no increase in total height.
- 2.) No change in location of the WECS.
- 3.) No additional lighting change or facility color.
- 4.) No increase in noise or shadow flicker produced by the WECS.

c.) Overnight parking of vehicles will be permitted only during periods requiring additional personnel, equipment, or extended periods of time necessary for the maintenance and repair of a wind energy system. There will be no parking on public roads.

d.) Any damaged or unused parts shall be removed from the Site within thirty (30) days or stored in a locked on-site storage building. All maintenance equipment, spare parts, oil or chemicals shall also be stored in said on-site locked storage building.

13.) Safety and Security Requirements

a.) Shall have lightning arresting systems.

b.) Wind turbines shall be equipped with electromagnetic (automatic) and mechanical (manual) braking systems to prevent over rotation, reducing stress on tower and rotor blades. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over speeding, and excessive pressure on the Tower structure, rotor blades, and turbine components.

c.) Security signs for public safety and warnings shall be allowed. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be

- posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence), containing emergency contact information, including a local telephone number with 24 hour, 7 day per week coverage. The Planning Board may require additional signs as approved on the Site Plan.
- d.) A security plan shall be required, including the training of first responders, with emergency personnel contacts and responsibilities posted at the site, including the Town of Kendall Emergency Services, and the Town of Kendall Town Clerk.
 - e.) A locked gate shall be provided at the junction of a driveway and a public road to restrict access. Access points shall be guarded by physical structure, fencing or bollards to block non-permitted access to driveways.
- 14.) Setbacks for Wind Energy Conversion Systems
- a.) The statistical sound pressure level generated by a WECS shall not exceed L10 -50dBA measured at the off-Site property line. However, this sound pressure level may be exceeded during short-term events such as severe wind storms and utility outages. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5dBA.
 Impendent certification shall be provided by a qualified and Town approved licensed acoustic engineer before and after construction demonstrating compliance with this requirement. The measurement of sound pressure levels shall be performed in accordance with the latest revision of International Standards for acoustic noise measurement techniques for Wind Generators (IEC 61400-11) or other industry accepted procedures.
 - b.) In the event audible noise due to the WECS operations contains a steady pure tone, such as a whine, screech or hum, the standards for audible noise shall be reduced by five (5) dBA. A pure tone is defined to exist if the one-third (1/3) octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two (2) contiguous one third (1/3) octave bands by five (5) dBA for center frequencies of five hundred (500) Hz and above, by eight (8) dBA for center frequencies between one hundred and sixty (160) Hz and four hundred (400) Hz, or by fifteen (15) dBA for center frequencies less than or equal to one hundred and twenty-five (125) Hz.
 - c.) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five (5) minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, places of worship and public buildings. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed Project Site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed thirty (30) mph at the ambient noise measurement location.
 - d.) A CWECS shall not be operated so that impulsive sound below 20 Hz affects the habitability or use of any dwelling, existing residences, schools, places of worship and public buildings.
 - e.) Each CWECS shall be set back from Site boundaries as measured from the center of the CWECS:
 - 1.) One-thousand five hundred (1500) feet from any Hamlet district boundary line.

- 2.) One hundred (100) feet plus fall zone radius from state and federally identified wetlands.
This distance may be adjusted to be a greater distance at the discretion of the Planning Board, based on topography, land cover, land uses, state or federal requirements, and other factors such as the influence CW ECS has on any endangered species or the flight patterns of resident birds.
- f.) Two-thousand five hundred (2500) feet from the property line of any school, places of worship, or any public facility.
- g.) One-thousand five hundred (1500) feet from the nearest off-site residence existing at the time of the application. The setback is to be measured from the exterior of such residence to the center of the WECS and include all residences in and outside the Town of Kendall.
- h.) One-thousand five hundred (1500) feet from the right of way of any public road and highway. The setback shall be measured from the centerline of such right-of-way.
- i.) One hundred (100) feet plus the fall zone radius from the nearest farm building, and utility lines.
- j.) Two hundred (200) feet plus the fall zone radius from on-site occupied structures (human and farm animal), any historical site, LWRP District, and bridges.
- k.) Six hundred (600) feet from the nearest site boundary line or tax property boundary (non-residential).
- l.) The Planning Board may impose a setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.

15.) Tower Structures

- a.) The Fall Zones of a WECS shall not overlap one another.
- b.) Multiple Towers may be sited on a contiguous property and on legally leased adjacent parcels.
- c.) Towers will only be of a mono-tubular, freestanding design with interior stairs accessed by a security door within the tower column. The use of guy wires is prohibited.
- d.) Nacelle will be of the latest upwind design accessed via interior stair only.
- e.) Wind Turbine Towers shall not have external ladders or climbing devices, fire suppression systems or extinguishers.

16.) Wildlife Species and Habitat

- a.) Development and operation of a Commercial Wind Energy Facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats or other significant habitats identified in the Town of Kendall. Studies, plans and guidelines will be used to demonstrate criteria established by Federal or State regulatory agencies.
- b.) Migratory birds:
Development and operation of a Commercial Wind Energy Facility shall be evaluated based on SEQRA findings.
- c.) Design and layout of the facility shall not create artificial habitats which draw rodents or prey and entice raptors to frequent the site, leading to increased bird strikes.

D.) TRANSFER

No transfer of any Wind Energy Facility or Special Use Permit, nor sale of the entity owning such facility including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town Board, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical

and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor, nor of any other party, under this Section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.

SECTION 728 RESIDENTIAL WIND ENERGY CONVERSION SYSTEMS (Amended 08.28.08)

A.) GENERAL

- 1.) The placement, construction, and major modification of all Residential Wind Energy Conversion Systems (RWECS) within the boundaries of the Town of Kendall shall be permitted only by Special Use Permit.
- 2.) Residential Wind Energy Conversion Systems shall require a site plan review and approval by the Planning Board, a Special Permit issued by the Planning Board and a Building Permit issued by the Zoning (Code) Enforcement Officer per Article III of the Town of Kendall Zoning Ordinance.
- 3.) The applicant shall pay all costs associated with the Town of Kendall's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing the application. This agreement will include the cost of the review required by SEQRA.
- 4.) Any WECS proposed within a distance of five hundred (500) feet from: Any county boundary line; any town boundary line; any village boundary line; any existing or proposed county or state park; any right-of-way of a county or state road or parkway; any stream or canal owned by the county; any existing or proposed county or state owned land on which a public building or institution is situated must be referred to the Orleans County Planning Board. The Orleans County Planning Board shall have thirty (30) days from the date of county receipt to take action on the matter.
- 5.) Residential Wind Energy Conversion Systems are permitted in the Residential Agricultural (RA), Rural Residential (RR) and General Business (GB) Districts.
- 6.) The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront 6. The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).
- 7.) Only one Residential Wind Energy Conversion System per legal single-family residential site shall be allowed and the system shall be primarily used to reduce the on-site consumption of electricity of the residence. At no times shall electricity be distributed across property lines except to tie into the electrical grid system.
- 8.) Residential Wind Energy Conversion Systems shall be placed or located only in rear yards.
- 9.) The Minimum Lot Size shall be no less than two acres (87,120 Sq. Ft.) in area.
- 10.) With the sale or transfer of any portion of the existing property, current or subsequent owners must submit, within thirty (30) days of the property transfer, to the Planning Board, an application for renewal of the Special Use Permit. Approval of the renewal of the Special Use Permit shall be conditional upon:
 - a.) Written acceptance of the transfer of obligations from the previous owner to the new owner and the new owner's demonstration, in the sole discretion of the Planning Board, that said new owner can meet the technical and any financial obligations of the original Special Use Permit.
 - b.) The applicant can still meet all requirements of the Town of Kendall Zoning Ordinance and all conditions of the Special Use Permit. No sale or transfer of property shall eliminate the liability of either the original owner or of any other party of the Residential Wind Energy Generating System under this Section, unless there are no outstanding obligations or violations.

B.) APPLICATION

- 1.) Applicants shall request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer and with any consultants retained by the Planning Board for preliminary application review.
- 2.) Upon Submittal of an Application the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
- 3.) An Application for a Residential Wind Energy Conversion System shall include the following:
 - a.) Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - b.) Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
 - 1.) The property owner is familiar with the proposed application.
 - 2.) The property owner authorizes the submission of the application.
 - c.) Project description:

Provide a comprehensive description of the project, including project location, total height of the tower, maximum rated capacity of the wind turbine and the utilities required.
 - d.) A list of all adjacent property owners. The names, property addresses, mailing address and tax map numbers of all owners of land within five hundred (500) feet of the boundary of the property upon which the property is proposed shall be provided to the Planning Board for review and record retention.
 - e.) Site Plan

A scaled site plan (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which shall include all of the information listed below. The Planning Board may require additional information, if necessary to complete its review.

 - 1.) Title block showing the drawing title, date of preparation, name and address of applicant, name and address of a the person or firm preparing the drawing, and the signature and seal of a licensed Professional Engineer, Land Surveyor or Landscape Architect.
 - 2.) North arrow and bar scale.
 - 3.) Boundaries and physical dimensions of the site.
 - 4.) Existing watercourses and bodies of water, including any state and federal wetlands.
 - 5.) Public and private roads within one hundred (100) feet of the site boundaries.
 - 6.) Existing residential and non-residential structures and driveways located on-site.
 - 7.) Existing residential and non-residential structures located off-site and within five hundred (500) feet of the site boundaries.
 - 8.) Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences and any other amenities.
 - 9.) Existing and proposed above ground and underground utilities located on the site.
 - 10.) Shall present construction plan detailing access routes, on-site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.
 - 11.) A circle drawn to scale around the tower which includes the fall zone equal to 150% of rotor blade height at apex.
 - f.) Engineering Drawings

The applicant shall include scaled engineering drawings (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which show details and dimensions of the following:

- 1.) Tower.
 - 2.) Tower Guy wire and anchor details if any.
 - 3.) Turbine.
 - 4.) Foundation.
 - 5.) Distance between ground and the lowest point of any rotor blade.
 - 6.) Height and location of climbing pegs and ladders.
 - 7.) Fencing and the color and finish of each major component.
 - 8.) Details and dimensions of all proposed equipment, accessory structures, access roads and driveways.
- g.) Manufacturers Product Information
- 1.) Applications shall include product information from the manufacture of the proposed wind turbine or rotor blade, tower, supporting foundations, anchorage, inverter, structures and transmission lines as a composite.
 - 2.) Supporting documentation shall include a company history and operational facilities in service as reference information and a statement of projected operational life of the facility.
 - 3.) Supporting evidence showing that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
- h.) The application shall include a full SEQRA Environmental Assessment Form (EAF) with Part 1 prepared by the applicant. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).
- i.) Agricultural Data Statement
- Applications for a facility that are proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:
- 1.) The name and mailing address of the applicant.
 - 2.) A description of the proposed project and its specific location.
 - 3.) Identification of the agricultural district in which the site is located.
 - 4.) A brief description of the farm operations and how they will be affected by the proposed wind system.
 - 5.) The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
 - 6.) A tax map or other map showing the project site and the location of the farm operations involved.
- j.) Agreement to Remove Facilities
- Applications shall include a written agreement in which the applicant agrees to remove the facility and to restore the site when the facility reaches the end of its design life, or if the facility ceases to operate for more than six (6) consecutive months, or if the property is sold and the new property owner does not want to continue operation of the facility, or if directed by the Town of Kendall due to non-compliance. The agreement must include or declare that:
- 1.) All work will be arranged and paid for by the applicant.
 - 2.) A description of how the facility will be removed.
 - 3.) A description of how the site will be restored.
 - 4.) Specify the estimated cost for removal and restoration.
 - 5.) Specify the source and/or method of funding that will be available for removal and restoration.
- k.) The Applicant Shall Agree to provide annually, a “Cost of Living” Adjusted Bond, escrow account or financial security sufficient for the removal of Wind Energy System at it’s maturity,

continued malfunction or disability of system and/or egregious violation of any portion of this Ordinance which causes the Code Enforcement Officer or Planning Board to issue a Stop Order and/or rescind the Special Permit. If the applicant secures a surety bond to insure funds are available for removal and restoration, a copy of the bond shall be attached to the agreement. The company issuing the bond must appear on the U.S. Department of the Treasury's listing of approved surety and have a valid New York State surety license. The penal sum of the bond must be equal to the estimated cost of removal and restoration. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.

l.) Agreement to Pay Town Consultant Fees:

The application shall include a written agreement in which the applicant agrees to pay for reasonable legal fees and consultant fees incurred by the Planning Board should they choose to employ a consultant to review the drawings, analyses, studies, reports and certifications submitted by the applicant. The applicant must also agree to pay for reasonable consultant fees incurred by the Planning Board should they choose to employ a consultant to assist with the SEQRA process. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.

m.) Agreement to Provide Sound Pressure Level and Shadow Flicker Testing: Applications shall include a written agreement in which the applicant agrees to provide and pay for a reasonable amount of pre-construction ambient noise level testing and post-construction sound pressure level testing and/or shadow flicker analysis when requested by the Planning Board. Testing may be requested at any time during the term of a Special Permit to ensure compliance or to resolve noise or visual complaints received from nearby property owners. The agreement must be signed by the applicant and bear the seal and signature of a Notary Public.

n.) The applicant shall provide proof of liability insurance. The Town of Kendall shall be named as an additional insured under the general liability policy of the applicant, with an amount no less than an amount to be determined by the Town Board given the nature and scope of the project.

C.) STANDARDS FOR RESIDENTIAL WIND ENERGY CONVERSION SYSTEMS

1.) The Tower Design must be certified by a NYS Licensed Engineer.

2.) The Tower Height shall be no more than:

a.) Sixty five (65) feet or less on parcels of land between two and less than five acres.

b.) One hundred twenty (120) feet on parcels of land of five acres or more.

c.) The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Administration Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

3.) Ground Clearance of horizontal axis rotor blades shall not be less than thirty-five feet (35ft). To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two hundred fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.

4.) Rooftop and Tower Systems supported in part or wholly by a non-residential accessory building shall be of Vertical Axis Wind Turbine design only. All buildings must be evaluated for the stress and loads developed by a VAWT and certified by a New York State licensed Engineer.

5.) The System Maximum Turbine power output is limited to a rated capacity of thirty (30) kW.

6.) Storm Water Run-Off and Erosion control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.

- 7.) Any Construction or Ground Disturbance involving agricultural land or land located in agricultural districts shall be done according to the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.
- 8.) The use of guy wires is disfavored. A guyed system may be approved only by compelling evidence and documentation submitted to the Planning Board as to why a free standing tower cannot be used. Should a guyed system be approved, the tower shall incorporate appropriate measures to protect the guy wires from damage which could cause tower failure. All ground attachment points and tower base must be enclosed by six foot (6ft.) high security fencing.
- 9.) Wind Turbine Towers shall not be climbable for the first twelve feet above ground level. The tower shall be constructed to provide one of the following means of access control or other appropriate method of access:
 - a.) Tower climbing apparatus "pegs" or "rungs" located no closer than twelve feet from the ground.
 - b.) A locked, protective fence six foot (6ft.) in height that encloses the tower.
 - c.) A locked anti-climb device installed on the tower.
- 10.) The Proposed Site shall include a fall zone radius of no less than 150% of rotor blade height at the apex.
 - a.) The fall zone shall be:
 - 1.) Free of obstructions, residences or structures and shall not include public or private roads.
 - 2.) No closer than fifty (50) from the site property line.
 - 3.) No closer than 500 feet from the nearest off-site residence (including residences outside the Town of Kendall).
 - b.) The fall zone and any tower guy wires shall not be located on or across any above ground electrical transmission or distribution lines.
- 11.) No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site Plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
- 12.) The System's Tower, nacelle, and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
- 13.) The Wind Energy Conversion System shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
- 14.) All Horizontal Axis WECSs shall be equipped with electro-magnetic and manual brake controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor and over stress the tower and components. Vertical axis wind turbines shall be controlled to prevent overspeed, and exceeding the design limits of the rotor, support structure, and other components.
- 15.) All On-Site electrical wires associated with the system shall be installed underground, whether net-metered or a stand alone system, except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
- 16.) The Statistical Sound Pressure Level generated by a WECS shall not exceed L10 - 45dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure

level exceeds 45 dBA, the standard shall be ambient dBA plus 5dBA. Certification shall be provided after construction demonstrating compliance with this requirement.

- 17.) The system shall be operated such that no disruptive electromagnetic interference is caused to neighboring residences or cell phone and microwave towers. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the interference or cease operation of the system.
- 18.) No brand names, logo, antennas, or advertising shall be allowed on any part of the facility or placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on the system generator housing in an unobtrusive manor. However, permanent identification of manufacturer and responsible contact information in case of failure or malfunction will be mounted on the Tower Base.
- 19.) The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.
- 20.) A residential WECS which is not used for six (6) consecutive months shall be deemed abandoned and a public nuisance and shall be subjected to the requirements of SECTION 730.

D.) RENEWAL OF SPECIAL PERMITS FOR RESIDENTIAL WIND ENERGY CONVERSION SYSTEM

Three (3) Copies of the following information must be submitted to the Planning Board, and shall constitute a complete application for special permit renewal.

- 1.) Special Use Permit Application Form. The application shall be marked "RENEWAL" by the applicant.
- 2.) Special Use Permit Renewal Fee The applicant shall pay a non-refundable renewal fee as established by the Town of Kendall Town Board.
- 3.) At the request of the Planning Board the applicant/owner shall make available (subject to a non-disclosure agreement) to the Town, all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems as necessary to prove the WECS is functioning. Requested reports may be edited as necessary to protect proprietary information.
- 4.) Structural Integrity Certification If the facility has been installed for longer than the manufacturer's warranty period, the renewal application shall include a certification that the facility was inspected for structural and mechanical integrity by a New York State licensed Professional Engineer, and that the facility is structurally sound and poses no risk of failure or harm to residences on the Site or to the public. The inspection must be performed within thirty (30) days of the date of the application, and the certification shall include the date of inspection, a description of the inspection, methodology used, computations, and any other data used to determine the facility's structural integrity. The certification must be signed by the permit holder and bear the seal and signature of a licensed Professional Engineer. If the inspection report identified structural deficiencies, the Special Use Permit will not be renewed until all deficiencies are corrected and the facility is determined to be structurally sound by a licensed Professional Engineer.

SECTION 729 AGRICULTURAL WIND ENERGY DERIVING SYSTEMS (Amended 08.28.08)

A.) GENERAL

- 1.) Agricultural Wind Energy Generating Systems shall require a site plan review and approval by the Planning Board, and a building Permit issued by the Zoning (Code) Enforcement Officer per Article III of the Town of Kendall Zoning Ordinance.

- 2.) The applicant shall pay all costs associated with the Town of Kendall's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Kendall may require the applicant to enter into an escrow agreement to cover the engineering and legal costs of reviewing and processing the application. This agreement will include the cost of the review required by SEQRA.
- 3.) Any Wind Energy Conversion System proposed within a distance of five hundred (500) feet from: Any county boundary line; any town boundary line; any village boundary line; any existing or proposed county or state park; any right-of-way of a county or state road or parkway; any stream or canal owned by the county; any existing or proposed county or state owned land on which a public building or institution is situated must be referred to the Orleans County Planning Board. The Orleans County Planning Board shall have thirty (30) days from the date of county receipt to take action on the matter.
- 4.) Agricultural Wind Energy Generating Systems are permitted in the Residential Agricultural (RA) and Rural Residential (RR) Districts.
- 5.) The applicant is required to conform to all requirements of the Town of Kendall Local Waterfront Revitalization Program (LWRP).
- 6.) The minimum lot size shall be no less than seven (7) acres in area.
- 7.) The Agricultural Wind Energy Facility shall be primarily used to generate electricity for the generation of energy for predominantly agricultural purposes only, and includes any farming residence and Farm Labor camp(s).

B.) APPLICATION

- 1.) Applicants shall request a pre-application meeting(s) with the Planning Board, Code Enforcement Officer and with any consultants retained by the Planning Board for preliminary application review.
- 2.) Upon submittal of an application the Planning Board shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this application is included in the application. No application shall be acted on by the Planning Board until the application is deemed complete by the Planning Board.
- 3.) An application for an Agricultural Wind Energy Conversion System shall include the following:
 - a.) Name, address, telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
 - b.) Name, address, telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that:
 - 1.) The property owner is familiar with the proposed application
 - 2.) The property owner authorizes the submission of the application
 - c.) Address or other property identification of each proposed tower location, including Tax Map section, block and lot number.
 - d.) Project description:
Provide a comprehensive description of the project, including project location, total height of the tower, maximum rated capacity of the wind turbine and the utilities required.
 - e.) A List of all adjacent property owners:
The names, property addresses, mailing address and tax map numbers of all owners of land within one-thousand (1000) feet of the boundary of the property upon which the property is proposed shall be provided to the Planning Board for review and record retention.
 - f.) Site Plan:

A scaled site plan (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which shall include all of the information listed below. The Planning Board may require additional information, if necessary to complete its review.

- 1.) Title block showing the drawing title, date of preparation, name and address of applicant, name and address of a the person or firm preparing the drawing, and the signature and seal of a licensed Professional Engineer, Land Surveyor or Landscape Architect.
 - 2.) North arrow and bar scale.
 - 3.) Boundaries and physical dimensions of the site in sufficient scale to verify setbacks.
 - 4.) Existing watercourses and bodies of water, including any state and federal wetlands.
 - 5.) Public and private roads within one hundred (100) feet of the site boundaries.
 - 6.) Existing residential and non-residential structures and driveways located on-site.
 - 7.) Existing residential and non-residential structures located off-site and within five hundred (500) feet of the site boundaries.
 - 8.) Location of the proposed tower, equipment, foundations, guy points, substations, accessory structures, fences and any other amenities.
 - 9.) Existing and proposed above ground and underground utilities located on the site.
 - 10.) Shall present construction plan detailing access routes, on site disturbance of landscape, trees, soils and restoration thereof at completion of facility erection period.
 - 11.) A circle drawn to scale around the tower which includes the fall zone equal to 150% of rotor blade height at apex
- g.) Engineering Drawings
The applicant shall include scaled engineering drawings (prepared by a licensed Professional Engineer, licensed Land Survey or Landscape Architect) which show details and dimensions of the following:
- 1.) Tower
 - 2.) Turbine
 - 3.) Foundation
 - 4.) Distance between ground and the lowest point of any rotor blade.
 - 5.) Height and location of climbing pegs and ladders.
 - 6.) Fencing and the color and finish of each major component.
 - 7.) Details and dimensions of all proposed equipment, accessory structures, access roads and driveways.
- h.) Manufacturers Product Information
Applications shall include product information from the manufacturer of the proposed wind turbine or rotor blade, tower, supporting foundations, anchorage, inverter, structures and transmission lines as a composite. Supporting documentation shall include a company history and operational facilities in service as reference information and a statement of projected operational life of the facility.
- i.) The Application shall include a Full SEQR Environmental Assessment Form (EAF) with Part 1 prepared by the applicant. The SEQRA shall also include a Visual EAF Addendum (from SEQRA Part 617.20, Appendix B).
- j.) Agricultural Data Statement
Applications for a facility that is proposed on property within an agricultural district containing a farm operation, or on property with boundaries within five hundred (500) feet of a farm operation located within an agricultural district, shall include an Agricultural Data Statement. The statement shall include:
- 1.) The name and mailing address of the applicant.
 - 2.) A description of the proposed project and its specific location.

- 3.) Identification of the agricultural district in which the site is located.
- 4.) A brief description of the farm operations and how they will be affected by the proposed wind system.
- 5.) The name and mailing address of any owner of land located in an agricultural district within five hundred (500) feet of the boundary of the property upon which the project is proposed.
- 6.) A tax map or other map showing the project site and the location of the farm operations involved.

k.) Agreement to Remove Facilities

Applications shall include a written agreement in which the applicant agrees to remove the facility and to restore the site when the facility reaches the end of its design life, if the facility ceases to operate for more than six (6) consecutive months, or if directed by the Town of Kendall due to noncompliance. The agreement must include or declare that:

- 1.) All work will be arranged and paid for by the applicant.
- 2.) A description of how the facility will be removed
- 3.) A description of how the site will be restored.
- 4.) Specify the estimated cost for removal and restoration.
- 5.) Specify the source and/or method of funding that will be available for removal and restoration.

- l.) The Applicant shall agree to provide an annually, “Cost of Living” adjusted Bond, escrow account or financial security sufficient for the removal of Wind Energy System at it’s maturity, continued malfunction or disability of system and/or egregious violation of any portion of this Ordinance which causes the Code Enforcement Officer or Planning Board to issue a stop order and/or rescind the Special Permit. If the applicant secures a surety bond to insure funds are available for removal and restoration, a copy of the bond shall be attached to the agreement. The company issuing the bond must appear on the U.S. Department of the Treasury’s listing of approved surety and have a valid New York State surety license. The penal sum of the bond must be equal to the estimated cost of removal and restoration. The agreement must be signed by the applicant and bear the seal and signature of a notary public.

m.) Agreement to pay Town Consultant Fees:

The application shall include a written agreement in which the applicant agrees to pay for reasonable consultant and legal fees incurred by the Planning Board should they chose to employ a consultant to review the drawings, analyses, studies, reports and certifications submitted by the applicant. The applicant must also agree to pay for reasonable consultant fees incurred by the Planning Board should they choose to employ a consultant to assist with the SEQRA process. The agreement must be signed by the applicant and bear the seal and signature of a notary public.

- n.) Agreement to provide sound pressure level and shadow flicker testing: Applications shall include a written agreement in which the applicant agrees to provide and pay for a reasonable amount of sound pressure level testing and or shadow flicker analysis when requested by the Planning Board. Testing may be requested at any time during the term of a special permit to ensure compliance or to resolve noise or visual complaints received from nearby property owners. The agreement must be signed by the applicant and bear the seal and signature of a notary public.

C.) STANDARDS FOR AGRICULTURAL WIND ENERGY CONVERSION SYSTEMS

- 1.) The Tower Design must be certified by a New York State Licensed Engineer.

- 2.) The Tower Height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the code of federal regulations regarding installations close to airports.
- 3.) Ground Clearance of horizontal axis rotor blades shall not be less than thirty-five feet (35ft). To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two hundred fifty (250) foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
- 4.) Rooftop and Tower Systems supported in part or wholly by a non-residential structure shall be of Vertical Axis Wind Turbine design only. All buildings must be evaluated for the stress and loads developed by a VAWT and certified by a New York State licensed Engineer.
- 5.) All Towers shall be free-standing (self supporting). The use of guy wires is prohibited.
- 6.) Wind Turbine Towers shall not be climbable for the first twelve feet above ground level. The tower shall be constructed to provide one of the following means of access control or other appropriate method of access:
 - a.) Tower climbing apparatus “pegs” or “rungs” located no closer than twelve feet from the ground.
 - b.) A locked, protective fence six foot (6ft.) in height that encloses the tower.
 - c.) A locked anti-climb device installed on the tower.
- 7.) The Proposed Site shall include a fall zone radius of no less than 150% of rotor blade height at the apex.
 - a.) The fall zone shall be:
 - 1.) Free of obstructions, and shall not include public or private roads.
 - 2.) No closer than fifty (50) from the site property line.
 - 3.) No closer than 1000 feet from the nearest off-site residence (including residences outside the Town of Kendall).
 - b.) The fall zone shall not be located on or across any above ground electrical transmission or distribution lines.
- 8.) Storm-water Run-off and Erosion Control shall be managed in a manner consistent with all applicable State and Federal laws and regulations.
- 9.) No Tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
- 10.) The System’s tower, nacelle, and blades shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
- 11.) The Wind Energy Conversion System shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.
- 12.) All Horizontal Axis WECS shall be equipped with electro-magnetic and manual brake controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor and over stress the tower and components. Vertical axis wind turbines shall be controlled to prevent overspeed, and exceeding the design limits of the rotor, support structure, and other components.
- 13.) All On-site electrical wires associated with the system shall be installed underground, whether net-metered or a stand alone system, except for “tie-ins” to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the Planning

Board if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.

- 14.) The Statistical sound pressure level generated by a WECS shall not exceed L10 - 50dBA measured at the nearest residence located off the Site. Sites can include more than one piece of property and the requirement shall apply to the combined properties. If the ambient sound pressure level exceeds 50 dBA, the standard shall be ambient dBA plus 5dBA. Certification shall be provided after construction.
- 15.) The System shall be operated such that no disruptive electromagnetic interference is caused to neighboring residences or cell phone and microwave towers. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the interference or cease operation of the system.
- 16.) No brand names, logo, antenna, or advertising shall be allowed on any part of the facility or placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacture's logo may be displayed on the system generator housing in an unobtrusive manor. However, permanent identification of manufacturer and responsible contact information in case of failure or malfunction will be mounted on the tower base.
- 17.) Access roads required for construction shall be adequate to support weight of trucks, erection cranes, facility sections and heavy construction equipment. The applicant is responsible for remediation of damaged roads during construction and upon completion of the installation or maintenance of a Wind Energy Conversion System.
- 18.) Any construction or ground disturbance involving agricultural land or land located in agricultural districts shall be done in according to the New York State Department of Agriculture and Markets' publication titled Guidelines for Agricultural Mitigation for Wind Power Projects.
- 19.) The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the Wind Energy Conversion System.

SECTION 730 ENFORCEMENT; PENALTIES; ABATEMENT; LIMITATIONS; BONDS; FUNDS; AND REMEDIES FOR VIOLATION FOR ALL WECS (Amended 08.28.08)

A.) ENFORCEMENT

In addition to the Code Enforcement Officer, the Town Board may appoint such town staff or outside consultants as it sees fit to enforce this section.

B.) PENALTIES

Any person owning, controlling, or managing any building, structure, or land who shall undertake a wind energy conversion facility in violation of this Section or in noncompliance with the terms and conditions of any permit issued pursuant to this Section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to:

- 1.) For a first offense, a fine of not more than \$400 or imprisonment for a period of not more than fifteen days, or subject to both such fine and imprisonment.
- 2.) For a second offense (both within a period of five years), a fine of not less than \$400 or more than \$700 or imprisonment for a period not to exceed six months, or subject to both such fine and imprisonment.
- 3.) For a third offense (all within a period of five years), a fine of not less than \$700 or more than \$1000 or imprisonment not to exceed six months, or subject to both such fine and imprisonment.
- 4.) Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount set

forth herein for each violation and each week said violation continues shall be deemed a separate violation.

- 5.) In case of any violation or threatened violation of any of the provisions of this section, including the terms and conditions imposed by any permit issued pursuant to this section, in addition to other remedies and penalties herein provided, the Town of Kendall may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving, and or use, and to restrain, correct, or abate such violation, to prevent the illegal act.

C.) ABATEMENT

1.) Public Nuisance

Every unsafe, incomplete, abandoned, or inoperable Wind Energy Facility is hereby declared a public nuisance which shall be subjected to abatement by repair, rehabilitation, demolition, or removal.

2.) Inoperable:

- a.) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, by lack of income generation or physical damage. The applicant/owner shall make available (subject to a non-disclosure agreement) to the Town, all reports to and from the purchaser of energy from individual Wind Energy Conversion Systems, if requested as necessary to prove the WECS is functioning. Requested reports may be edited as necessary to protect proprietary information.
 - b.) Safety issues deemed to be of an imminent threat to the health, safety and/or welfare of any person affected by a Wind Energy Conversion System as determined by the Code Enforcement Officer shall require the immediate shut down of the WECS, an immediate corrective action shall be taken and the imminent threat fully mitigated.
- 3.) If any WECS remains non-functional or inoperative for a continuous period of six months, the applicant agrees that, without any further action by the Town Board, it shall remove said system and return the land to pre-existing conditions at its own expense. Removal of the system shall include but not limited to:
 - a.) All above ground structures including support buildings, transmission equipment, and fencing from the property.
 - b.) Removal of the concrete base of a wind turbine to a depth of not less than five (5) feet to pre-construction grade elevation.
 - c.) All agricultural areas shall be restored to as close to pre-construction conditions as possible and shall be in compliance with NYS Dept. of Ag and Markets guidelines. A remediation plan shall be put in place to identify and correct any remaining or recurring impacts derived from a WECS or WECSs.
 - 4.) This Provision may be waived at the discretion of the Town Board if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after a public hearing.
 - 5.) Notwithstanding any other abatement provisions, if the WECS is not repaired, made operational, or brought into permit compliance after said notice, and after a public meeting at which time the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, the Town may:
 - a.) Order either remedial action within a particular timeframe.
 - b.) Or order revocation of the Special Use Permit for the WECS and order removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the Decommissioning Plan to remove the WECS.

D.) LIMITATIONS ON APPROVALS; EASEMENTS ON TOWN PROPERTY

- 1.) Nothing in this Section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on the Site or any other property to reduce turbulence and increase wind flow to the Wind Energy Conversion System. Nothing in this Section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any WECS. It shall be the sole responsibility of the Facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.
- 2.) Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback, or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this Section.

E.) DECOMMISSIONING BOND OR FUND

- 1.) An Applicant, developer, successors, property owner, heirs, or assigns, private or court appointed and of record shall continuously maintain a fund or bond payable to the Town of Kendall for the removal of non-functioning towers, accessory facilities, and land restoration in an amount and frequency of review to be determined by the Town Board for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York-licensed financial institution. All cost of the financial security shall be borne by the applicant, developer, successors, property owner, heirs, or assigns, private or court appointed and of record.
- 2.) Any cost incurred by the Town that exceeds the amount of such financial surety or is not covered by said surety shall be the complete and sole responsibility of the applicant. If the applicant is insolvent and such costs cannot be practicably collected from said applicant, then such costs shall become a lien upon the property in which the costs were incurred. The lien shall thereafter be assessed on the next succeeding year's tax bill for such parcel and collected in accordance with normal tax foreclosure proceedings if such tax bill remains unpaid thereafter.
- 3.) Upon completion of all such removal activities by the Town, any remaining portion of the posted surety shall be returned to the applicant.

F.) TESTING FUND

A Special Use Permit shall contain a requirement that the applicant fund periodic noise and/or shadow flicker testing by a qualified independent third-party measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town in response to complaints by neighbors. The scope of the testing shall be to demonstrate compliance with the terms and conditions of the Special Use Permit or Site Plan and shall also include an evaluation of any complaints received by the Town. The Applicant shall have 90 days after written notice from the Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town Board, but the total period may not exceed 180 days.

G.) SEVERABILITY

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

ARTICLE VIII
ADMINISTRATION AND ENFORCEMENT

SECTION 800 ENFORCEMENT

The duty of administering and enforcing the provisions of this Ordinance is hereby conferred upon the Zoning Enforcement Officer, who shall be appointed by the Town Board and receive compensation, as the Town Board shall determine.

SECTION 801 DUTIES AND PROCEDURES OF THE ZONING ENFORCEMENT OFFICER

- A.) Administer the Zoning Law. The Zoning Enforcement Officer shall review all applications for building permits and, if the minimum requirements of this Ordinance are met, the Officer shall issue a permit. If the applicant's plans do not meet the Zoning requirements, the Officer must deny the permit. The Zoning Enforcement Officer may not use discretionary judgement. The Officer must enforce the "Letter of the Law".
- B.) Referral to the Zoning Board of Appeals. An applicant, after being denied a building permit, may appeal the Zoning Officer's findings to the Zoning Board of Appeals (ZBA) for an interpretation or a variance. Should an appeal be requested, the Zoning Enforcement Officer shall notify the Secretary of the ZBA of the request and forward all necessary supporting information on to the ZBA for action.
- C.) Referral to Town Planning Board. Any application for a special permit, a change in a zoning district, or a change in use that requires site plan review, shall be forwarded by the Zoning Enforcement Officer to the Secretary of the Town Planning Board for action. All necessary supporting information shall also be forwarded.
- D.) Site Zoning Violations. For any plans, construction, building, use on premises found in violation of this Ordinance, the Zoning Enforcement Officer shall order the responsible party, in writing, to remedy the conditions. He shall have the authority to commence proceedings to punish violations pursuant to Section 106 of this Ordinance.
- E.) Report to Town Board. A monthly report shall be given to the Town Board describing and enumerating actions taken and permits issued.
- F.) Public Record. The Zoning Enforcement Officer shall file all permit actions with the Town Clerk.

SECTION 810 PLANNING BOARD

The Town Board authorizes the appointment of a five (or seven) member Planning Board as more fully described in Town Law Section 271. It shall be recommended that at least one member shall be a person engaged in agricultural pursuits as defined in Town Law Section 271, Subsection 2. Terms

of all Planning Board members shall be staggered as the law requires.

SECTION 812 OFFICER, RULES AND EXPENSES

- A.) The Town Board may select a Chairman of the Planning Board, or on failure to do so, the Planning Board shall elect a chairman from its own members.
- B.) The Planning Board may adopt rules or bylaws for its operations.

SECTION 813 FUNCTIONS OF THE PLANNING BOARD

- A.) Prepare or change a comprehensive land development plan for the Town. The Planning Board shall be responsible for review and evaluation of proposals and projects in the coastal area of the town. The planning board is authorized to prepare and recommend to the Town Board for adoption a Local Waterfront Revitalization Program (LWRP), with its policies, maps and uses, for the entire Lake Ontario shoreline and coastal area that is located within town boundaries, along the boundary lines defined in Section 210 of this Zoning Ordinance. Considerations and recommendations made by the planning board as to a proposed action's consistency with the LWRP shall be submitted to the town board for final determination and certification of compliance with LWRP policies, maps and uses.
- B.) Review and comment on all proposed zoning amendments before referral to the County Planning Board.
- C.) Conduct Site Plan Review as authorized by Town Law 274A and prescribed in Article X of this Ordinance.
- D.) Review and grant or deny special permits as authorized by Article IX.
- E.) Render assistance to the Zoning Board of Appeals at its request.
- F.) Research and report on any matter referred to it by the Town Board.
- G.) Make investigations, maps, reports, and recommendations in any matter related to Planning and Development as it seems desirable providing expenditure of the Board do not exceed appropriations (Town Law Section 275).
- H.) The Town Board can by resolution authorize the Planning Board to modify applicable provisions of the zoning ordinance simultaneously with plat map approval in accordance with Town Law Section 281.

SECTION 814 COUNTY PLANNING BOARD REPRESENTATIVES

The Town shall nominate a member of the Planning Board to serve on the County Planning Board when vacancies occur. An alternate member shall also be nominated by the Town Board and shall attend the County Planning Board meetings on those dates when the full member cannot. Final appointment to the County Planning Board is made by the County Legislature.

SECTION 820 ZONING BOARD OF APPEALS

SECTION 821 APPOINTMENT OF ZONING BOARD OF APPEALS

Pursuant to Section 267 of Town Law, there shall be a Zoning Board of Appeals consisting of five (5) members holding staggered five (5) year terms appointed by the Town Board. The Town Board shall appoint the ZBA's Chairman.

SECTION 822 OFFICERS, RULES, AND EXPENSES

- A.) The ZBA may adopt rules or bylaws for its operations.
- B.) All decisions shall be by a majority vote of the membership (three), except in the case of the County Planning Board recommending disapproval or modification of a referral. In such cases, a majority plus one vote (total vote of four) shall be required to override the County Planning Board recommendation.

SECTION 823 FUNCTIONS OF THE ZONING BOARD OF APPEALS

- A.) Interpretation. Upon appeal from a decision by the Zoning Enforcement Officer, the ZBA shall decide any question involving interpretation of any provision of this Ordinance.
- B.) Appeals for Variances. Upon denial of building permit by the Zoning Enforcement Officer, the ZBA shall hear requests for variances as more fully described in Section 834 of this Ordinance.

SECTION 830 APPEALS FOR VARIANCE THROUGH THE ZONING BOARD OF APPEALS (ZBA)

All requests for variances shall be made to the ZBA after denial of a building permit by the Zoning Enforcement Officer.

SECTION 831 VARIANCE POLICY

The granting of variances shall be principally for those seeking an area variance. Use variances allow activities prohibited in the Zoning District, and such requests shall be carefully reviewed.

SECTION 832 GRANTING AREA OR DIMENSIONAL VARIANCES

- A.) Area variances may be granted where setback, frontage, lot size density or yard requirements of this Ordinance cannot be reasonably met. (Amended 08.05.96)
- B.) In determining whether to grant or deny a request for an area variance, the ZBA shall respond in its findings to each of the following factors:
 - 1.) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
 - 2.) Whether the benefit sought by the applicant can be achieved by some other feasible method other than an area variance.
 - 3.) Whether the requested variance is substantial.
 - 4.) Whether the proposed area variance will have an adverse effect or impact on the physical or environmental condition as in the neighborhood or district.
 - 5.) Whether the alleged difficulty was self-created. (Amended 08.05.96)
- C.) Area Variance Procedures:

Area variances shall be granted by the procedure established in Section 834.

SECTION 833 GRANTING USE VARIANCES

- A.) A use variance may be granted by the ZBA only after the findings of the ZBA establish that “Unnecessary Hardship” exists.
- B.) In determining whether “Unnecessary Hardship” exists, the ZBA’s findings must establish each of the

following criteria:

- 1.) That for each and every permitted use under the zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.
 - 2.) That the hardship is unique, and does not apply to a substantial portion of the district or neighborhood.
 - 3.) That the variance will not alter the essential character of the neighborhood.
 - 4.) That the hardship is not self-created. (Amended 08.05.96)
- C.) Use Variance Procedure. Use variances shall be granted only by the procedure established in Section 834.

SECTION 834 PROCEDURES FOR GRANTING A VARIANCE

- A.) All applications for variances shall be in writing on forms established by the ZBA. They are available from the Zoning Enforcement Officer.
- B.) Every application shall refer to the specific provision of the law involved and establish the details of why the variance should be granted.
- C.) Upon receipt of the completed application the ZBA shall:
 - 1.) Schedule a public hearing.
 - 2.) Arrange publication of notice of the public hearing as described in Section 835.
 - 3.) Refer the application to the County Planning Board as required by General Municipal Law Section 239, if required.
 - 4.) Determine whether a Draft Environmental Impact Statement should be required.
- D.) Within 62 days of the public hearing, the ZBA shall render a decision. If the matter was referred to the County Planning Board, a copy of the ZBA's findings and decision must be sent to the County Planning Board. (Amended 08.05.96)

SECTION 835 NOTICE OF PUBLIC HEARING

- A.) The Board shall fix a reasonable time for the hearing of appeals not to exceed 60 days from date of ZBA receipt, or 90 days where cases are referred to the County Planning Board, and shall give due notice of the time met for the hearing to the applicant. Public notice shall be by the publication of a notice in the official newspaper of the town pursuant to law, and shall briefly describe the nature of the appeal and the time and place of the hearing. (Amended 08.05.96)

SECTION 836 MEETINGS OF THE BOARD

- A.) The Zoning Board of Appeals shall hold meetings at the call of the Board.
- B.) The presence of three (3) members shall constitute a quorum for the conduct of business before the Board.
- C.) The presence of three (3) members of the Board shall be necessary to act on the application for any variance or to decide upon any other matter brought before the Board, unless otherwise stipulated in the ordinance.
- D.) All votes of the Zoning Board of Appeals shall be taken by roll call.
- E.) In accordance with General Municipal Law, Section 908, a member of the Zoning Board of Appeals having a conflict of interest shall abstain from any discussion or voting on that matter.
- F.) The Zoning Board of Appeals may request and obtain any advice or opinions on the law relating to any

- matter before the Board from the town attorney, and require the town attorney to attend its meetings.
- G.) The Zoning Board of Appeals may require the Zoning Enforcement Officer to attend its meetings to present any facts relating to any matter before the Board.
 - H.) All meeting of the Zoning Board of Appeals shall be open to the public.
 - I.) The Zoning Board of Appeals shall make factual record of all its proceedings including the reading of the case, public hearing, deliberation, voting and decisions of the Board. These factual records shall be taken by stenographic and/or tape recorder means and shall be accurate but not necessarily a verbatim transcript, but may be in narrative form. The factual record shall be taken by the secretary to the Board.

SECTION 840 REQUIRED REFERRALS TO THE COUNTY PLANNING BOARD

The Zoning Enabling Laws require that any of the following local zoning actions must be referred to the County Planning Board prior to action by the local board. Any proposal for a special permit, variance, site plan approval, change in the zoning law text or map (rezoning, amending the zoning law) which would affect real property lying within a distance of 500 feet from the boundary of:

any county; any town; any village; any right-of-way of any county or state road or parkway; any stream or canal owned by the county; any existing or proposed county or state owned land on which a public building or institution is situated;

must be referred to the County Planning Board who shall have 30 days from date of County receipt to take action on the matter. By mutual agreement of the county and the municipality, such 30 day period may be extended in special cases.

Certain zoning actions may be exempt from County Planning Board review using local agreements allowed under NYS General Municipal Law, Article 12-B, Section 239-m.3.(c) of the Laws of 1991. Refer to the agreement between the Orleans County Planning Board and the Town of Kendall (if executed) for a list of minor land use actions exempt from referral to the County Planning Board. (Amended 08-05-9 6)

SECTION 845 EFFECT OF COUNTY PLANNING BOARD REVIEW

- A.) If the County Planning Board approves a referral, then the local board’s decision is governed by a majority vote.
- B.) If the County Planning Board disapproves or approves a referral subject to stated conditions or modifications, the local board may override the county opinion only by a majority plus one vote.

SECTION 846 REPORT ON FINAL LOCAL ACTION

The local board must send a copy of its final decision on a county referral, and reasons for its decision to the County Planning Board within 7 days after the local decision is reached.

SECTION 847 AGRICULTURAL DATA STATEMENT

In accordance with Section 283-a of Town Law, any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval by the planning board or zoning board, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within 500’ of a farm operation located within an agricultural district, shall include an agricultural data statement. The planning board or zoning board shall evaluate and consider the agricultural

data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district.

Upon receipt of such application by the planning board or zoning board, the clerk of such board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or federal law, ordinance, rule or regulation for the said project. The cost of mailing the notices shall be borne by the applicant.

An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within 500' of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

If the project location meets any of the criteria set forth in Section 840 of this Ordinance, the clerk of the planning board or zoning board shall refer all applications and the agricultural data statement to the County Planning Board as required under Sections 239m. and 239n. of the General Municipal Law.

(Amended 08.05.96)

ARTICLE IX **SPECIAL PERMITS**

SECTION 900 PURPOSE

It is the intent of this ordinance to use Special Permits to control the impact of certain uses upon areas where they will be incompatible unless conditioned in a manner suitable to a particular location. Special Permits bring needed flexibility and individuality to the otherwise rigid controls of zoning regulations.

SECTION 901 ADMINISTRATION

Pursuant to Section 274a of Town Law, the Town Planning Board will administer the review and granting of Special Permits.

SECTION 902 PROCEDURE

- A.) The Zoning Enforcement Officer shall refer the completed special permit application to the Town Planning Board within ten (10) days after receiving a completed application.
- B.) At its next regular or special meeting, the Town Planning Board shall designate a public hearing date within a reasonable period of time, not to exceed 62 days from the date application was made or 90 days in cases when the application must be referred to the County Planning Board (in accordance with General Municipal Law, Section 239m). (Amended 08-05-96)
- C.) The Town Planning Board shall send a notice of the public hearing to the applicant and publish a notice of the public hearing in the official newspaper, one of general circulation in the Town.
- D.) The notice of the public hearing shall be sent and published at least 5 calendar days prior to the date of public hearing as well as sufficient information so as to identify the property involved and the nature of the proposed action. (Amended 08-05-96)
- E.) The Town Planning Board shall make a factual record of all its proceedings involving the granting of a special permit. The decision of the Planning Board shall contain the reasons for its decision.
- F.) The Town Planning Board shall render its decision, either approving, approving with conditions, or denying the special permit within 62 days after the hearing unless an extension is mutually agreed upon. (Amended 08.05.96)
- G.) Each application for a special permit shall be accompanied by a proposed plan showing the information required for site plan approval as described in Article X of this Ordinance.
- H.) No permit shall be issued in the Local Waterfront Revitalization Program (LWRP) area unless the application is accompanied by a completed Coastal Assessment Form (CAF). Such form shall be reviewed by the Planning Board and certified by the Town Board as consistent with the Local Waterfront Revitalization Program prior to issuance of a Zoning Permit.
- I.) Each special permit application must also receive site plan approval before the special permit may be

granted.

SECTION 903 FINDINGS

- A.) The Town Planning Board may grant a special permit for uses described in Article VII provided that all requirements and conditions set forth in that Article are complied with.
- B.) The Planning Board shall make written findings for each special permit decision. Findings shall state the reasoning behind, the basis for, and the evidence relied upon to reach the decision. Compliance with the requirements of Article VII shall also be substantiated.

ARTICLE X **SITE PLAN REVIEW**

SECTION 1000 PURPOSE

The intent of this section is to set forth additional general standards applying to certain uses and activities. The nature of these uses and activities require special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Town to accommodate development consistent with the objectives of this Ordinance.

SECTION 1001 APPLICATIONS

All applications for zoning permits, zoning variances, or special permits, except for one and two family dwellings, their permitted accessory uses, any addition to a single family dwelling, or general farming use, shall be accompanied by a site plan approval. Residential development within a Historic District, all development in the Waterfront Development District, and all Home Businesses must also have site plan approval. No zoning permit shall be issued until all the requirements of this Article and all other applicable provisions of the Ordinance have been met.

SECTION 1002 PROCEDURE

- A.) Each application for a building permit, variance or special permit for any structure, building or use other than a one or two family dwelling, their permitted accessory use, any addition to a single family dwelling or general farming use shall be referred to the Town Planning Board. The application shall be made to the Planning Board by filing it with the Zoning Enforcement Officer. The Zoning Enforcement Officer shall present it to the Planning Board at their next regularly scheduled meeting. The applicant may wish to attend the Planning Board meeting to answer questions concerning the application.
- B.) Within 62 days of receipt of the application or 90 days in cases when the application must be referred to the County Planning Board, the Planning Board shall render a decision to approve, approve with conditions, or deny the site plan, and shall forward the decision to the Zoning Enforcement Officer. Any extension of this 62 day period may be granted upon consent of both the applicant and the Town Planning Board. If the Planning Board fails to act within the 62 day period or the extension period that has been granted, the site plan shall be considered approved. (Amended 08.05.96)
- C.) A full written record of the Planning Board minutes and decisions together with all documents pertaining to the case shall be filed in the Office of the Town Clerk and shall be mailed to the applicant.

SECTION 1003 PREAPPLICATION CONFERENCE

A pre-application conference may be held between the Planning Board and applicant to review the basic site design concept and to determine the information to be submitted with the site plan.

SECTION 1004 APPLICATION FOR SITE PLAN APPROVAL

An application for a non-wind energy conversion system site plan approval shall be made in writing to the Zoning Enforcement Officer and shall be accompanied by information drawn from the following checklist. An application for a commercial, residential or agricultural wind energy system shall meet the application requirements of the appropriate wind energy application section 724, 725, 727, 728 or 729. The Planning Board may require additional information if necessary, to complete its review. (Amended 08.28.08)

- A.) Plan checklist for all non-wind energy conversion system site plans: (Amended 08.28.08)
- 1.) Title of drawing, including name and address of applicant and person responsible for preparation of such drawing.
 - 2.) North arrow, scale and date.
 - 3.) Boundaries of the property plotted to scale.
 - 4.) Existing watercourse and bodies of water.
 - 5.) Location of any slopes of 5% or greater.
 - 6.) Proposed grading and drainage.
 - 7.) Location, proposed use, and height of all buildings and site improvements including culverts, drains, retaining walls and fences.
 - 8.) Location, design and construction materials of all parking and truck loading areas, showing points of entry and exit from the site.
 - 9.) Location of outdoor storage, if any.
 - 10.) Description of the method of sewage disposal and location of the facilities.
 - 11.) Identification of water source; if well, locate on drawing.
 - 12.) Location, size and design and construction materials of all proposed signs.
 - 13.) Location and proposed development of all buffer areas, including existing vegetation cover.
 - 14.) Location and design of outdoor lighting facilities.
 - 15.) General landscaping plan.
 - 16.) Copy of property deed and a listing of all deed restrictions.
- B.) As necessary, the Planning Board may require the following:
- 1.) Provision for pedestrian access, if necessary.
 - 2.) Location of fire lanes and hydrants.
 - 3.) Designation of the amount of building area proposed for retail sales or similar commercial activity.
 - 4.) Other elements integral to the proposed development as considered necessary by the Planning Board.

SECTION 1005 PLANNING BOARD REVIEW OF SITE PLAN

The Planning Board's review of the site plan shall include, as appropriate, the following:

- A.) General considerations:
- 1.) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road

- widths, pavement surfaces, dividers and traffic controls. This includes the maximum feasible redesign of private roads to conform to public access and rights of way.
- 2.) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
 - 3.) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - 4.) Location, arrangement, size, and design and general site compatibility of buildings, lighting and signs. No use shall be undertaken which eliminates or substantially reduces the view/vista of an existing property due to height, bulk or orientation of structure.
 - 5.) Adequacy of storm-water and drainage facilities.
 - 6.) Adequacy of water supply and sewage disposal facilities.
 - 7.) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum feasible retention of existing vegetation.
 - 8.) In the case of an apartment complex or other multiple dwelling, the adequacy of useable open space for play areas and informal recreation.
 - 9.) Protection of adjacent or neighboring properties against noise, glare, unsightliness or nuisances.
 - 10.) Protection of solar access on adjacent or neighboring properties.
 - 11.) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
 - 12.) Special attention to the adequacy of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
 - 13.) Special attention to the productive use and access with "backlot" areas, indicating present and future intended uses.
 - 14.) Consistency with the general intent of the town's Comprehensive Master Plan, and consistency with the policies and uses of the Local Waterfront Revitalization Program (LWRP).
- B.) Consultant Review. The Planning Board may consult with the town building inspector, fire commissioners, highway departments, county planning department, and other local county officials, in addition to representatives of federal and state agencies including, but not limited to, the Soil Conservation Service, the State Department of Transportation and the State Department of Environmental Conservation.
- C.) Public Hearing. The Planning Board may conduct a public hearing of the site plan. If a public hearing is considered desirable by a majority of the Planning Board, such public hearing shall be conducted within 62 days of the receipt of the application and shall be advertised in the official newspaper of the town at least five (5) days before the public hearing. A decision shall be rendered within 62 days after the public hearing. (Amended 08-05-96)

